



A TREATISE ²¹⁶³/₁₁
ON THE
LAW OF TAXATION

INCLUDING
THE LAW OF LOCAL ASSESSMENTS

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THIRD EDITION

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VOL. I.

CHICAGO
CALLAGHAN AND COMPANY
1903

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STATE JOURNAL PRINTING COMPANY,
PRINTERS AND STEREOTYPERS,
MADISON, WIS.

PREFACE TO THE FIRST EDITION.

The following pages have been prepared with a view to present in a shape for practical use, the general rules which must govern the action of all authorities acting in matters of taxation. Had a similar task been previously undertaken, the writer would gladly have been spared the labor; but Mr. Blackwell's *Treatise on Tax Titles* covers the ground only in part, and Judge Dillon, though he has done valuable service in the same direction, has not, in his work on *Municipal Corporations*, deemed it advisable to go beyond what seemed necessary to a legitimate and perspicuous presentation of that subject. Other writers have had occasion to discuss only particular topics in the law of taxation, leaving a comprehensive examination of the general subject to be still entered upon.

The decisions in this country on the subject of taxation have become so numerous, that it would be impossible to give abstracts of them all, within any reasonable compass. The author has thought it preferable, instead of attempting a digest of them, to group the references about the controlling principles. The tax systems of the several states are so dissimilar, that a mere digest of the cases is exceedingly liable to mislead, by giving, as a general rule of law, what is only a conclusion from a local law or custom. There are, or should be, general principles underlying all the cases; and an understanding of these will enable one to make use of decisions under the various tax systems without confusion.

The subject of taxation seems to invite some consideration of questions of political economy; but these have been passed by after bare mention, as not being necessarily involved in a discussion of the legal points. They present considerations

for the legislature in framing tax laws; but courts and ministerial officers must enforce tax laws as they are, whether based on sound or unsound principles of political economy.

The preparation of any treatise on taxation necessarily involves the presentation of disputed points, and the expression of opinions upon them. This has been done in the following pages. It has not been the purpose, however, to take any positions which it was not believed the authorities would justify; and if this has been done in any instance, the references which are made to authorities will doubtless enable the reader to detect the error. Possibly it may be thought that, on some points, too much importance has been attached to these fundamental principles which restrict the power to tax. But when one considers how vast is this power, how readily it yields to passion, excitement, prejudice or private schemes, and to what incompetent hands its execution is usually committed, it seems unreasonable to treat as unimportant, any stretch of power—even the slightest—whether it be on the part of the legislature which orders the tax, or of any of the officers who undertake to give effect to the order. Especially is this so when it is understood how little restraint there can be on the ignorant action of assessors, acting with jurisdiction, and how very seldom an effectual remedy can be administered where fraud or corruption exists. And as the benefits of republican government have been reached through the efforts of the people to establish and maintain the legitimate restraints upon the power to tax, it seems unwise in a high degree to slight or disregard any of the checks which the law has provided, whether those which are intrusted to the hands of the judiciary, or those which are the lawful right of the people themselves who are to bear the burden of the particular tax.

THOMAS M. COOLEY.

UNIVERSITY OF MICHIGAN,
Ann Arbor, January, 1876.

PREFACE TO THE SECOND EDITION.

Since the first edition of this work appeared, several thousand cases have been decided by courts of last resort in this country, involving questions of importance in the law of taxation, and the time seems to have arrived for bringing together the results of the cases under the appropriate headings. This has now been done, and the author has reason for believing that this work is very considerably improved thereby.

In the original edition pains were taken to present in as clear a light as possible the fundamental principles underlying the law of taxation. This involved the necessity for expressions of opinion on some points not yet covered by authoritative decision; but the author is happy to believe that on no important point have the subsequent decisions shown him to be in error. He therefore offers the new edition to the public in confidence that it will not only be found convenient for professional use, but also a reliable presentation of the results of judicial thought on this very important subject.

THOMAS M. COOLEY.

UNIVERSITY OF MICHIGAN,
Ann Arbor, January, 1886.

PREFACE TO THE THIRD EDITION.

This edition, prepared at the request of Judge Cooley, was far advanced towards completion at the time of his death, but subsequently unavoidably delayed. He himself directed that the second edition should be taken as the basis of the third, and most of the important alterations in the text were examined and affirmed by him. Such alterations as have been made are almost always by way of amplification, for nearly every passage of Judge Cooley's text has been cited with approval by high authority. In its present form the text is supported or illustrated by references to seventeen thousand decisions, more than nine thousand of which were not mentioned in the previous edition.

ALBERT P. JACOBS.

DETROIT, *September 1, 1903.*

PUBLISHER'S NOTE.

The index to this work and the table of cases from L to Z were done by our editorial force.— C. & Co.

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LAW OF TAXATION.

CHAPTER I.

TAXES, THEIR NATURE AND KINDS.

Definition. Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs.¹ The state demands and receives them from

¹ Opinions of Justices, 58 Me. 590, 591; *People v. Lothrop*, 3 Colo. 428, 460; *Linton v. Childs*, 105 Ga. 567, 571; *Jack v. Weiennett*, 115 Ill. 105, 109; *Wagner v. Rock Island*, 146 Ill. 139, 152; *Succession of Mercier*, 42 La. Ann. 1135, 1142, 1143; *Heywood v. Board of Com'rs*, 18 Utah 57, 63; *State v. Yellow Jacket S. M. Co.*, 14 Nev. 220, 250. See *State v. Thomas*, 16 Utah 86, 96; *Union R. T. Co. v. Lynch*, 18 Utah 378; *Kimball v. Grantsville City*, 19 Utah 368; *Hewitt v. Traders' Bank*, 18 Wash. 326, 330. "Taxes are the burdens or charges imposed by the legislative power of a state upon persons or property to raise money for public purposes:" *Clegg v. State*, 42 Tex. 605, 608. The same definition, in language almost identical, is found in *Loan Assoc. v. Topeka*, 20 Wall. 655, 664; *Perry v. Washburn*, 20 Cal. 318, 350; *People v. McCreery*, 34 Cal. 432, 454; *Hanson v. Vernon*, 27 Iowa 28, 47; *Judd v. Driver*, 1 Kan. 455, 462; *Davidson v. Commissioners*, 18 Minn. 482, 486; *Hawkins v. Carroll County*, 50 Miss. 735, 737; *Glasgow v. Rowse*, 43 Mo. 479, 489; *Sharp v. Speir*, 4 Hill (N. Y.), 76, 82; *Knowlton v. Supervisors*, 9 Wis. 410, 418; *Dalrymple v. Milwaukee*, 53 Wis. 178, 184; *State v. Tomahawk Common Council*, 96 Wis. 73. "The word 'taxes' means burdens, charges or impositions put or set upon persons or property for public uses:" *Matter of Mayor, etc. of New York*, 11 Johns. (N. Y.) 77, 80; *Mitchell v. Williams*, 27 Ind. 62, 63; *Mayor, etc. v. Green Mount Cemetery*, 7 Md. 517, 535; *Van Horn v. People*, 46 Mich. 183, 185. See *De Clercq v. Barber Asphalt Co.*, 167 Ill. 215, 218. "A tax is an impost levied by authority of government upon its citizens or subjects for the support of the state:" *Camden v. Allen*, 26 N. J. L. 398; *Lane County v. Oregon*, 7 Wall. 71, 80; *United States v. Railroad Co.*, 17 Wall. 323, 326; *Meriwether v. Garrett*, 102 U. S. 472, 514; *Augusta v. North*, 57 Me. 392, 394; *Peirce v. Boston*, 3 Metc. (Mass.) 520, 521; *Allen v. Jay*, 60 Me. 124, 127; *Carondelet v. Picot*, 38 Mo. 125, 130; *Hibbard v. Clark*, 56 N. H. 155, 159; *Whiteaker v. Haley*, 2 Or. 128, 139; *Northern Liberties v. St. John's Church*, 13 Pa. St. 104, 107; *Pray v. Northern Liberties*, 31 Pa. St. 69, 71; *Philadelphia Assoc. v. Wood*, 39 Pa. St. 73, 82; *Board*

the subjects of taxation¹ within its jurisdiction² that it may be enabled to carry into effect its mandates and perform its man-

of Education v. Old Dominion, etc. Co., 18 W. Va. 441, 444. "Taxes are the forcible, and, within constitutional limits, the arbitrary exactions of the government for its support and use, taken from the substance of the people:" Nebraska City v. Gas Co., 9 Neb. 389, 345. "Taxes are forced contributions for the support of the body politic:" Geren v. Gruber, 26 La. Ann. 694, 697. "The ordinary meaning of the term 'tax' is the contribution which the citizen is required to pay for his share of the general expense of the government, and it may be imposed upon persons or property or both:" In re Hun, 144 N. Y. 472. "A tax is the means by which a burden primarily borne by the state is transferable to the citizen:" Morton v. Compt. Gen., 4 S. C. 430, 453. "Taxes are public burdens imposed generally upon the inhabitants of the whole state, or upon some civil division thereof, for governmental purposes, without reference to particular benefits or particular individuals or property:" Roosevelt Hospital v. New York, 84 N. Y. 108, 112. Assessments on townships to pay subscriptions in aid of railroads are within the terms of a statute prohibiting courts from enjoining collection of taxes: Chamblee v. Tribble, 23 S. C. 70. The word "tax" includes a penalty for non-payment, that by the force of the statute becomes part of the tax: Harrisburg v. Guiles, 192 Pa. St. 191.

¹ "By the term 'taxation,' the power of imposing taxes upon the property of the citizen generally for the support of the government is intended:" Taylor v. Palmer, 31 Cal. 241, 250. "Taxation is the mode of raising revenue for public purposes:" Sharpless v. Mayor, 21 Pa. St. 147, 169; People v. Salem Tp Board, 20 Mich. 452,

474. And see Allen v. Jay, 60 Me. 124, 127; Wasteney v. Schott, 58 Ohio St. 410, 415; Frost v. Flick, 1 Dak. 129. "The term 'taxation' is ordinarily used to express the exercise of the sovereign power to raise a revenue for the general and ordinary expenses of the government, whether it be the state, county, town or city 'government':" Emery v. San Francisco Gas Co., 28 Cal. 345, 357. Taxation is the act of laying a tax; it is the process or means by which the taxing power is exercised:" Knowlton v. Supervisors, 9 Wis. 410, 418. "Taxation is an equal division of public expense:" State v. Express Co., 60 N. H. 219, 250. "Taxation exacts money or services from individuals as and for their respective shares of contribution to any public burden:" People v. Brooklyn, 4 N. Y. 419, 424; Woodbridge v. Detroit, 8 Mich. 275, 280; Hammett v. Philadelphia, 65 Pa. St. 146, 152. "That is taxation which compels one to pay for the support of the government from his own gains and of his own property:" United States v. Railroad Co., 17 Wall. 322, 326. "The word 'taxation' applies to all assessments for public purposes which are called 'taxes' and are authorized by law, including municipal taxes:" DuBuque v. Illinois Central R. Co., 39 Iowa 56, 69. "Tax legislation means the making of laws that are to furnish the measure of every man's duty in support of the public burdens, and the means of enforcing it:" Philadelphia Assoc. v. Wood, 39 Pa. St. 73, 82.

² A tax is "a charge levied by the sovereign power upon the property of its subjects. It is not a charge upon its own property, nor upon property over which it has no dominion:" People v. McCreery, 34 Cal. 432, 456.

ifold functions,¹ and the citizen pays from his property the portion demanded, in order that, by means thereof, he may be secured in the enjoyment of the benefits of organized society.² The justification of the demand is therefore found in the reciprocal duties of protection and support between the state and those who are subject to its authority, and the exclusive sovereignty and jurisdiction of the state over all persons and property within its limits for governmental purposes.³ The person upon whom the demand is made, or whose property is taken, owes to the state a duty to do what shall be his just proportion toward the support of government, and the state is supposed to make adequate and full compensation,⁴ in the protection which it gives to his life, liberty and property, and in the increase to the value of his possessions, by the use to which the money contributed is applied.⁵

¹ *Northern Liberties v. St. John's Church*, 13 Pa. St. 104; *Loan Assoc. v. Topeka*, 20 Wall. 655; *Graham v. St. Joseph T'p*, 67 Mich. 652; *People v. Lothrop*, 3 Colo. 428; *Jack v. Weienett*, 115 Ill. 105; *Loeber v. Leininger*, 175 Ill. 484.

² *Succession of Mercier*, 42 La. 1135; *Gould v. Mayor, etc.*, 59 Md. 378; *Heywood v. Board of Com'rs*, 18 Utah 57, 63. See *Exchange Bank v. Hyde*, 3 Ohio St. 1, 10. "Taxes are but the revenue collected from the people for objects in which they are interested; the contributions of the people for things useful and conducive to their welfare:" *Hilbish v. Catherman*, 64 Pa. St. 154, 159. "The public revenues," says Montesquieu, "are a portion that each subject gives of his property, in order to secure or enjoy the remainder:" *Spirit of Laws*, Bk. 13, ch. 1; *Duer v. Small*, 17 How. Pr. 201.

³ *McKeen v. Northampton County*, 49 Pa. St. 519, 524.

⁴ "The theory of all taxation is that taxes are imposed as a compensation for something received by the taxpayer:" *Dalrymple v. Milwaukee*, 53 Wis. 178; *Rolph v. Fargo*, 7 N. D. 640;

Webster v. Fargo, 9 N. D. 208; *People v. Daniels*, 6 Utah 288; *Kaysville City v. Ellison*, 18 Utah 163. "Taxation is based upon some idea of compensation, benefit or advantage, direct or indirect, to the person taxed:" *Williams v. Detroit*, 2 Mich. 560. But it is no objection to a tax that the payer derives no benefit from the particular burden: *Amesbury N. F. Co. v. Weed*, 17 Mass. 52; *New York, L. E. & W. R. Co. v. Commissioners*, 48 Ohio St. 249; *Pittsburgh, C., C. & St. L. R. Co. v. Harden*, 137 Ind. 486; *Thomas v. Gay*, 169 U. S. 264; *Wagoner v. Evans*, 170 U. S. 588. The legality of a tax cannot be determined by reference to the peculiar benefits to the particular property assessed for taxation: *Greenleaf v. Board of Review*, 184 Ill. 326. Yet a statute authorizing the levy of a tax for the prevention of prairie fires is invalid if it excludes from the benefit of the tax railway property that is subject to the tax: *Atchison, T. & S. F. R. Co. v. Clark*, 60 Kan. 826, 831.

⁵ *People v. Brooklyn*, 4 N. Y. 419; *In re Tuthill*, 163 N. Y. 133; *Huston v. Tribbetts*, 171 Ill. 547; *Union R. T. Co. v. Lynch*, 18 Utah 378.

Fundamental requirements. Taxes are supposed to be regular and orderly,¹ and they are commonly required to be paid at regular periods. They differ from the forced contributions, loans and benevolences of arbitrary and tyrannical periods, in that they are levied by authority of law, and by some rule of proportion which is intended to insure uniformity of contribution and a just apportionment of the burdens of government. In an exercise of the power to tax, the purpose always is that a common burden shall be sustained by common contributions, regulated by some fixed general rule, and apportioned by the law according to some uniform ratio of equality.² So the power is not arbitrary, but rests upon fixed principles of justice, which have for their object the protection of the taxpayer against exceptional and invidious exactions,³ and it is to have effect through established rules operating impartially.⁴ The apparent equity of any particular exaction cannot support it as a tax unless it is made in accordance with law;⁵ nor, on the other hand, can the seeming injustice of a levy actually authorized by law defeat it, provided it is made under

¹ *Tyson v. School Directors*, 51 Pa. St. 9. "A tax is an orderly rate levied on the property of the citizen according to its value, or a fixed sum levied on his person, for the public use:" *Mayor, etc. v. Dargan*, 45 Ala. 310, 319.

² *People v. Brooklyn*, 4 N. Y. 419; *Sutton's Heirs v. Louisville*, 5 Dana 28; *Knowlton v. Supervisors*, 9 Wis. 410; *Plumer v. Supervisors*, 46 Wis. 163; *Williams v. Detroit*, 2 Mich. 560; *Woodbridge v. Detroit*, 8 Mich. 274; *Ryerson v. Utley*, 16 Mich. 269; *Motz v. Detroit*, 18 Mich. 495; *People v. Salem T'p Board*, 20 Mich. 452; *Bay City v. State Treasurer*, 23 Mich. 499; *Chaffee's Appeal*, 56 Mich. 244; *Manistee v. Harley*, 79 Mich. 238; *Grim v. School Dist.*, 57 Pa. St. 453; *Booth v. Woodbury*, 32 Conn. 118; *New London v. Miller*, 60 Conn. 112; *State v. Express Co.*, 60 N. H. 219; *Macon v. Patty*, 57 Miss. 378; *Jack v. Wiennett*, 115 Ill. 105.

³ "Whenever the property of a citizen shall be taken from him by the

sovereign will, and appropriated, without his consent, to the benefit of the public, the exaction should not be considered as a tax unless similar contributions be made by that public itself, or shall be exacted rather by the same public will from such constituent members of the same community generally as own the same kind of property:" *Lexington v. McQuillan's Heirs*, 9 Dana 513, 517. Yet courts will not limit the exercise of the taxing power simply because methods are harsh, unreasonable and arbitrary: *Robertson v. State Land Office Com'r*, 44 Mich. 274.

⁴ *In re Cope's Estate*, 191 Pa. St. 1.

⁵ However equitable a land tax may be, it is void unless legally assessed: *Joyner v. School Dist.*, 5 Cush. 567. As when it is demanded contrary to agreement with the state, but to pay debts for which the state is liable for the party taxed: *Northern Mo. R. Co. v. Maguire*, 20 Wall. 46. See *Hamilton v. Amsden*, 88 Ind. 304.

such general rules as the wisdom of the legislature has determined are needful and proper for the general good.¹ The impossibility that government should be administered even by the most conscientious rulers without unjust consequences in particular cases is universally recognized; and the state is therefore considered to have performed its full duty when it has devised and established such general rules and regulations as seem calculated to reduce such consequences to a minimum.

Taxes distinguished from other charges. The distinction between demands of money under the power to tax and those under the police power, as well as the differences between ordinary taxes and special assessments for local improvements, will be considered later in this work.² Other impositions there are, which, though having some of the characteristics of taxes, are, nevertheless, distinguishable from those burdens because laid for different purposes and not necessarily governed by the same rules. Charges for services rendered, or for conveniences furnished, are in no sense taxes.³ Thus, water rates exacted by a public corporation from actual consumers are not taxes, being merely the price of a commodity.⁴ So, tolls for the use of passage over improved water-ways are not taxes.⁵ Nor are

¹ A tax for school purposes may be levied upon a manufacturing corporation: *Amesbury N. F. Co. v. Weed*, 17 Mass. 52. Or upon a non-resident's cattle: *Thomas v. Gay*, 169 U. S. 264; *Wagoner v. Evans*, 170 U. S. 588. And a railroad company may be taxed for the improvement of a turnpike: *New York, L. E. & W. R. Co. v. Commissioners*, 48 Ohio St. 249. Or even in aid of a rival railroad: *Pittsburgh, C., C. & St. L. R. Co. v. Harden*, 137 Ind. 486; *Baltimore & O. R. Co. v. Jefferson County*, 29 Fed. R. 305.

² Chs. XIX and XX, *post*.

³ *Packet Co. v. Keokuk*, 95 U. S. 80; *Huse v. Glover*, 119 U. S. 543.

⁴ *Jones v. Water Com'rs*, 34 Mich. 273; *Preston v. Detroit Water Com'rs*, 117 Mich. 589; *Wagner v. Rock Island*, 146 Ill. 139; *Vreeland v. O'Neil*, 36 N. J. Eq. 399; *Vreeland v. Jersey City*, 43 N. J. L. 135, 37 N. J. Eq. 574; *Alter v. Cin-*

cinnati, 56 Ohio St. 47, 67; *St. Louis Brewing Assoc. v. St. Louis*, 140 Mo. 419; *Silkman v. Water Com'rs*, 152 N. Y. 327. See *Provident Inst. v. Jersey City*, 113 U. S. 506. But a sum assessed for a supposed benefit arising from the presence or the public use of water, as distinguished from its private use, is a tax: *Remsen v. Wheeler*, 105 N. Y. 573; *Matter of Trustees of Union College*, 129 N. Y. 308. The provision for collecting the amount lent by the state under the Minnesota "seed-grain act" was held not to be taxation, but a method of foreclosing a statutory lien for money borrowed: *Deering v. Peterson*, 75 Minn. 108.

⁵ *Manistee River Imp. Co. v. Sands*, 53 Mich. 593; *Huse v. Glover*, 119 U. S. 543; *Sands v. Manistee River Imp. Co.*, 123 U. S. 288.

railroad fares,¹ nor charges for wharfage.² A claim by a municipal corporation for work done by it, for which the citizen is liable, is not a tax.³

Particular names of taxes. Particular names are applied to some kinds of taxes whereby they are commonly known and distinguished from all others; but in nearly every case the term is not used with much precision, and its use may, therefore, be liable to cause confusion. Thus the word *duty* is sometimes used in a general sense as synonymous with tax;⁴ but in common use it means an indirect tax, imposed on the importation or consumption of goods.⁵ The term *impost* also, in its general sense, signifies any tax, tribute or duty,⁶ but is seldom applied to any but the indirect taxes. *Customs duties*, as the term is commonly used, are the duties levied upon imports and exports, while *excise duties* are inland imposts levied upon articles of manufacture and sale, upon licenses to pursue certain trades, or deal in certain commodities, upon special privileges,⁷ etc. *Tribute*, though frequently synonymous with

¹ Tarbell v. Central Pacific R. Co., 34 Cal. 616.

² Packet Co. v. Keokuk, 95 U. S. 80; Transportation Co. v. Parkersburg, 107 U. S. 691.

³ Police Jury v. Mitchell, 37 La. Ann. 44.

⁴ "The term 'tax' has been applied to nearly, if not quite, every burden imposed upon persons, property or business, for the support of the government; and in acts for raising a revenue for public purposes it seems to be used as meaning the same thing as impost, duty or excise:" State v. Western Union Tel. Co., 73 Me. 518, 527. The words "tax" or "taxes," used in the revenue law of Illinois, mean "any tax, special assessment, or costs, interest, or penalties imposed upon property:" Blake v. People, 109 Ill. 504, 525. Duties, excises and license laws, having for their object the common benefit and protection, and designed for the prevention or mitigation of evils, are not

acts of taxing power: State v. U. S. etc. Express Co., 60 N. H. 219. The term "tax," as used in the last clause of United States Revised Statutes, § 3369, does not include import duties: United States v. Fifty-nine Demijohns, 39 Fed. R. 401.

⁵ Pollock v. Farmers' Loan, etc. Co., 158 U. S. 601.

⁶ An impost is a duty on imported goods and merchandise. In a larger sense it is any tax or imposition: Insurance Co. v. Soule, 7 Wall. 433. An exemption "from any tax or impost whatsoever" includes every forced contribution to the public treasury: Singer Manuf. Co. v. Heppenheim, 53 N. J. L. 633; Hancock v. Singer Manuf. Co., 62 N. J. L. 289.

⁷ An excise is a fixed, absolute and direct charge laid on merchandise, products or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public

tax,¹ ordinarily means an exaction demanded by a conqueror or by some irresistible external authority.² *Subsidy*, a term scarcely used in American law, denotes a special tax levied for some exceptional occasion or need. The term *toll*, in its application to the law of taxation, is nearly obsolete. It was formerly applied to duties on imports and exports; but tolls, as now understood, are applied most exclusively to charges for permission to pass over a bridge, road or ferry owned by the person imposing them.³

The taxing power incidental to sovereignty. The power of taxation is an incident of sovereignty,⁴ and is possessed by the government without being expressly conferred by the people.⁵ It is a legislative power;⁶ and when the people, by their

object and a special benefit occasioned to those by whom the charge is to be paid: *Oliver v. Washington Mills*, 11 Allen 263. And see *Bank v. Apthorp*, 12 Mass. 252; *Minot v. Winthrop*, 162 Mass. 113. A tax upon the stock of a banking corporation is an excise: *Bank v. Apthorp*, *supra*.

¹ "Tax," as the name itself imports from its derivation, means tribute: *Northern Liberties v. St. John's Church*, 13 Pa. St. 107. "Taxation implies tribute from the governed to some form of sovereignty:" *West Hartford v. Board of Water Com'rs*, 44 Conn. 360, 368.

² "An exaction from 'strangers' rather than from the 'children:'" Matthew 17: 26. Lawless and arbitrary exactions are sometimes called tribute when made by the constituted government, as in the remonstrances of the Spanish cortes to their sovereign against such demands: *Hallam's Middle Ages*, ch. IV.

³ "A tax is a demand of sovereignty; a toll is a demand of proprietorship:" *Case of the State Freight Tax*, 15 Wall. 232, 278. Railroad fares are not tolls: *State v. Haight*, 30 N. J. L. 447. But sums paid by one railroad company to another for the use of tracks are tolls within the mean-

ing of a statute taxing gross receipts for "tolls and transportations:" *New York, L. E. & W. R. Co. v. Pennsylvania*, 158 U. S. 431.

⁴ *McCulloch v. Maryland*, 4 Wheat. 316, 428; *Providence Bank v. Billings*, 4 Pet. 514, 561; *Union Pacific R. Co. v. Peniston*, 18 Wall. 5, 29; *Picard v. East Tenn., V. & G. R. Co.*, 130 U. S. 637, 641; *People v. Seymour*, 16 Cal. 332, 343; *Bank of Pennsylvania v. Commonwealth*, 19 Pa. St. 144, 152; *Kirby v. Shaw*, 19 Pa. St. 258, 260; *Wisconsin Central R. Co. v. Taylor*, 52 Wis. 37, 53; *Board of Directors v. Collins*, 46 Neb. 411, 424; *Western Union Tel. Co. v. Mayer*, 28 Ohio St. 521, 533; *Corbett v. Portland*, 31 Oreg. 407, 417; *Reelfoot Lake Levee Dist. v. Dawson*, 97 Tenn. 151, 158; *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684; *State v. Halter*, 149 Ind. 292, 297; *Geren v. Gruber*, 26 La. Ann. 694, 697; *Union R. T. Co. v. Lynch*, 18 Utah 378; *Kimball v. Grantsville City*, 19 Utah 368; *London, etc. Mortg. Co. v. Gibson*, 77 Minn. 394.

⁵ *Western Union Tel. Co. v. Mayer*, 28 Ohio St. 521, 533; *Porter v. Rockford, etc. R. Co.*, 76 Ill. 561, 573; *State v. Halter*, 149 Ind. 292, 297; *Union R. T. Co. v. Lynch*, 18 Utah 378.

⁶ *United States v. New Orleans*, 98

constitutions, create a department of government upon which they confer the power to make laws, the power of taxation is conferred as part of the more general power.¹ Even a wrongful government, if it be for the time being a government *de facto*, maintaining its authority and enforcing obedience to its laws, may exercise the power of taxation, and the power, so far as it has been completely enforced, must be recognized as lawful.² But the overthrow of the *de facto* government defeats the power; and the rightful government will not thereafter aid in enforcing the uncollected levies.³

U. S. 381; Meriwether v. Garrett, 102 U. S. 472; Spencer v. Merchant, 125 U. S. 345; Lake Shore & M. S. R. Co. v. Smith, 131 Ind. 512; State v. Halter, 149 Ind. 292; State Board of Tax Com'rs v. Holliday, 150 Ind. 216; Phelps v. Lodge, 60 Kan. 122; Bigger v. Ryker (Kan.), 63 Pac. Rep. 740; Board of Directors v. Collins, 46 Neb. 411; State v. Jackson, 31 N. J. L. 195; Jones v. Tonawanda, 158 N. Y. 438; Lima v. McBride, 34 Ohio St. 338; Board of Education v. McLandsborough, 36 Ohio St. 227; Corbett v. Portland, 31 Or. 407; Crafts v. Ray, 22 R. I. —, 46 Atl. Rep. 1043; Reelfoot Lake Levee Dist. v. Dawson, 97 Tenn. 151; Union R. T. Co. v. Lynch, 18 Utah 378; Kimball v. Grantsville City, 19 Utah 368; State v. Tomahawk Common Council, 96 Wis. 73; Oconto City Water Supply Co. v. Oconto, 105 Wis. 76.

¹ North Missouri R. Co. v. Maguire, 20 Wall. 46; Extension of Hancock St., 18 Pa. St. 26; Bank of Pennsylvania v. Commonwealth, 19 Pa. St. 144. See Blue Jacket v. Johnson County, 3 Kan. 299; Hagar v. Supervisors, 47 Cal. 222; Coite v. Society, 32 Conn. 173.

² O'Byrne v. Savannah, 41 Ga. 331. See Dickerson v. Acosta, 15 Fla. 614, as to taxation in the period of reconstruction. The collection of taxes levied by a *de facto* municipal corporation will not be enjoined, nor can an action for such taxes be re-

sisted, nor may deeds issued upon sale for non-payment of such taxes be held void, nor are such taxes if paid recoverable, on the ground that such municipality was not legally organized: Austrian v. Guy, 21 Fed. R. 500; Dean v. Davis, 51 Cal. 406; Reclamation Dist. v. Gray, 95 Cal. 601; Swamp Land Dist. v. Silver, 98 Cal. 51; Quint v. Hoffman, 103 Cal. 506; Reclamation Dist. v. Turner, 104 Cal. 334; Hamilton v. San Diego County, 108 Cal. 273; Geneva v. Cole, 61 Ill. 397; Trumbo v. People, 75 Ill. 561; People v. Newberry, 87 Ill. 41; West Chicago Park Com'rs v. Sweet, 167 Ill. 326; Mendenhall v. Burton, 42 Kan. 570; School Dist. v. School Dist., 45 Kan. 543; Chicago, St. L. & N. O. R. Co. v. Kentwood, 49 La. Ann. 931; Stuart v. School Dist., 30 Mich. 69; Stockle v. Silsbee, 41 Mich. 615; Coe v. Gregory, 53 Mich. 19; Riverton, etc. Water Co. v. Haig, 58 N. J. L. 295; Brennan v. Bradshaw, 53 Tex. 330; Graham v. Greenville, 67 Tex. 62; El Paso v. Ruckman, 92 Tex. 86. See Sherry v. Gilmore, 58 Wis. 324; Blanchard v. Bissell, 11 Ohio St. 96; Ritchie v. Mulvane, 39 Kan. 241; Bird v. Perkins, 33 Mich. 28; Reclamation Dist. v. Burger, 122 Cal. 442.

³ O'Byrne v. Savannah, 41 Ga. 331. As to collection by state of taxes levied by superseded territorial government, see Jacks v. Chaffin, 34 Ark. 534.

Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right.¹ Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes;² and not only is the power unlimited in its reach as to subjects, but in its very nature it acknowledges no limits, and may be carried even to the extent of exhaustion and destruction, thus becoming in its exercise a power to destroy.³ If the power

¹ *Catlin v. Hull*, 21 Vt. 152; *Brown's Appeal*, 111 Pa. St. 72; *Commonwealth v. Delaware Div. Canal Co.*, 123 Pa. St. 594; *Gallup v. Schmidt*, 154 Ind. 196; *Boyd v. Wiggins*, 7 Okl. 85; *Mumford v. Sewell*, 11 Or. 67; *In re Page*, 60 Kan. 842; *Linton v. Childs*, 105 Ga. 567. The authority of every state to tax all property, real and personal, within its limits is unquestionable: *Savings Society v. Multnomah County*, 169 U. S. 421. The taxing power reaches everything in the state which can be denominated property; it may be made to embrace all equitable credits: *Washington Iron Works Co. v. King County*, 20 Wash. 150.

² *Hamilton Manuf. Co. v. Massachusetts*, 6 Wall. 639; *North Missouri R. Co. v. Maguire*, 20 Wall. 46; *People v. Brooklyn*, 4 N. Y. 419; *In re McPherson*, 104 N. Y. 306; *Youngblood v. Sexton*, 32 Mich. 406; *Robertson v. State Land Office Com'r*, 44 Mich. 274; *Board of Education v. McLandsborough*, 36 Ohio St. 227; *Adler v. Whitbeck*, 44 Ohio St. 539; *Commonwealth v. Moore*, 25 Grat. 951; *State Board of Tax Com'rs v. Holliday*, 150 Ind. 216; *Williamson v. Mimms*, 49 Ark. 336; *People v. Ames*, 24 Colo. 422; *Bigger v. Ryker* (Kan.), 63 Pac. Rep. 740. See *Porter v. Rockford*, etc. R. Co., 76 Ill. 561. The power of the state to tax is plenary: *People v. Seymour*, 16 Cal. 332; *Gallup v.*

Schmidt, 154 Ind. 196; *Butler v. Saginaw Supervisors*, 26 Mich. 22; *State v. Lewis Co.*, 72 Minn. 87; *Kimball v. Grantsville City*, 19 Utah 368.

³ *McCulloch v. Maryland*, 4 Wheat. 316, 431; *Weston v. Charleston*, 2 Pet. 449; *Providence Bank v. Billings*, 4 Pet. 563; *Charles River Bridge v. Warren Bridge*, 11 Pet. 420; *Nathan v. Louisiana*, 8 How. 73; *Veazie Bank v. Fenno*, 8 Wall. 533; *California v. Central Pac. R. Co.*, 127 U. S. 1; *Fairbank v. United States*, 181 U. S. —; *Howell v. State*, 3 Gill 14; *Atkins v. Hinman*, 7 Ill. 449; *Cheaney v. Hooser*, 9 B. Monr. 339; *Commonwealth v. Petty*, 96 Ky. 452; *Perkins v. Milford*, 59 Me. 315; *Fifield v. Close*, 15 Mich. 505; *People v. Brooklyn*, 4 N. Y. 419; *People v. Lawrence*, 41 N. Y. 141; *Matter of Van Antwerp*, 56 N. Y. 261; *Weismer v. Douglas*, 64 N. Y. 91; *Spencer v. Merchant*, 100 N. Y. 585; *People v. Board of Assessors*, 156 N. Y. 417; *Tallman v. Butler County*, 12 Iowa 531; *Davenport v. Railroad Co.*, 16 Iowa 348; *State v. Bell*, 1 Phil. (N. C.) 76; *Pullen v. Commissioners*, 66 N. C. 361; *Bridge Proprietors v. State*, 21 N. J. L. 384; s. c. on appeal, 22 N. J. L. 593; *People v. Coleman*, 4 Cal. 46; *Taylor v. Palmer*, 31 Cal. 240; *State v. Commercial Bank*, 7 Ohio 125; *Hanna v. Allen County*, 8 Blackf. 352; *Commonwealth v. Westinghouse Electric, etc. Co.*, 151 Pa. St. 265, 271.

be threatened with abuse, security must be found in the responsibility of the legislature that imposes the tax to the constituency which must pay it. The judiciary can afford no redress against oppressive taxation, so long as the legislature, in imposing it, shall keep within the limits of legislative authority, and violate no express provision of the constitution.¹ The necessity for imposing it addresses itself to the legislative discretion, and it is or may be an urgent necessity which will admit of no property or other conflicting right in the citizen while it remains unsatisfied.²

Classification of taxes. Taxes may be either direct or indirect. The former include those assessed upon the property, person, business, income, etc., of those who are to pay them; while indirect taxes are levied upon commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. Under the second head may be classed the

¹ "The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So, if a particular tax bear heavily upon a corporation or upon a class of corporations, it cannot, for that reason only, be declared contrary to the constitution:" *Veazie Bank v. Fenno*, 8 Wall. 533, 548. See *Carroll v. Perry*, 4 McLean 25; *Weston v. Charleston*, 2 Pet. 466; *Lane County v. Oregon*, 7 Wall. 77; *Berney v. Tax Collector*, 2 Bail. (S. C.) 654; *Coite v. Society*, 32 Conn. 173; *Kirby v. Shaw*, 19 Pa. St. 258; *Pittsburgh, etc. R. Co. v. Commonwealth*, 66 Pa. St. 73; *Hanna v. Allen County*, 8 Blackf. 352; *State v. Newark*, 26 N. J. L. 519; *Tallman v. Butler County*, 12 Iowa 531; *State v. Stephens*, 4 Tex. 139; *Gibson v. Mason*, 5 Nev. 283; *Youngs v. Hall*,

9 Nev. 212; *Turner v. Althaus*, 6 Neb. 54; *Williams v. Cammack*, 27 Miss. 209; *Board of Com'rs v. State*, 147 Ind. 476; *Kimball v. Grantsville City*, 19 Utah 368. There is no limitation upon the state's power to tax unless found in the constitution itself, though when there found it must be strictly observed: *Cheney v. Jones*, 14 Fla. 587.

² *Parham v. Justices*, 9 Ga. 341; *Athens v. Long*, 54 Ga. 330; *Anderson v. Mayfield*, 93 Ky. 230; *Board of Directors v. Collins*, 46 Neb. 411. That property valuable because of a special use has greatly depreciated because of public events, *e. g.*, a rebellion against the government, constitutes no ground for applying to a court of equity to restrain or abate the taxes assessed thereupon: *White Sulphur Springs Co. v. Robinson*, 3 W. Va. 542. A purchaser of lands at a forced sale, even when made by the state, takes the land subject to all lawful taxes: *Stanton v. Harris*, 9 Heisk. 579.

duties upon imports, and the excise and stamp duties levied upon manufactures.¹ The individual states have always derived their principal revenues from direct taxes, and the federal government from those which are indirect, but this has been matter of selection and policy merely; there being no doubt that each government has power to levy taxes of both descriptions.

For the purposes of the general government congress has general power to lay and collect taxes, subject only to the limitations imposed by the federal constitution.² It is provided by that instrument that direct taxes, when laid by the federal government, shall be apportioned among the several states according to representative population.³ Question has several times been made as to the meaning of the term "direct taxes" as thus employed. It was held in an early case that a tax on carriages by number was not a direct tax in the sense of the constitution, and it was strongly intimated in the same case that only capitation taxes and taxes on land should be deemed within the provision.⁴ But in 1895 it was decided that as taxes on realty are indisputably direct taxes, so are taxes on the rent or income of realty;⁵ and that taxes on personalty or on the income thereof are likewise direct taxes.⁶ A tax of a specified per cent. upon the circulation of banks is not a direct tax;⁷ nor is a tax upon each sale of products by an exchange or board of trade;⁸ nor is a tax upon succession to property on the death of the owner.⁹ Under the Maryland bill of rights it has been decided that a tax upon the gross receipts of a railroad com-

¹ Wayland's Pol. Econ., Bk. 4, ch. 2, § 1. See also Kent's Com. 254; Story on Const., §§ 950-957; 1 Montesq. Spirit of the Laws, Bk. 13, ch. 7; Tucker's Pol. Econ., ch. 14; Rogers' Pol. Econ., ch. 22.

² License Tax Cases, 5 Wall. 462.

³ U. S. Const., art. 1, § 2, cl. 3.

⁴ Hylton v. United States, 3 Dall. 171. See Springer v. United States, 102 U. S. 586. "What was decided in the Hylton Case was that a tax on carriages was an excise, and therefore an indirect tax:" Fuller, C. J., in Pollock v. Farmers' Loan, etc. Co., 158 U. S. 601, 627.

⁵ Pollock v. Farmers' Loan, etc. Co., 157 U. S. 429, 586, 158 U. S. 601.

⁶ Pollock v. Farmers' Loan, etc. Co., 158 U. S. 601. Previously it had been held that a tax on income is not a direct tax: Pacific Ins. Co. v. Soule, 7 Wall. 433; Springer v. United States, 102 U. S. 586.

⁷ Veazie Bank v. Fenno, 8 Wall. 533. See National Bank v. United States, 101 U. S. 1.

⁸ Nicol v. Ames, 173 U. S. 509.

⁹ Scholey v. Rew, 23 Wall. 331; Knowlton v. Moore, 178 U. S. 41.

pany is not a direct tax upon property.¹ So of a license tax.² In Canada it is held that a license fee imposed upon manufacturers and traders is a direct tax.³

Maxims of policy. Writers on political economy lay down certain principles which should govern the imposition of taxes, but these are guides rather to the legislature than to the courts. The author of the "Wealth of Nations," in particular, has enumerated certain maxims, the substance of which may be stated as follows: 1. That the subjects of every state ought to contribute to the support of the government as nearly as possible in proportion to the revenue which they respectively enjoy under its protection. 2. The tax which each is to pay ought, as respects the time and manner of payment, and the sum to be paid, to be certain and not arbitrary. 3. It ought to be levied at the time and in the manner in which it is most likely to be convenient to the contributor to pay it; and 4. It ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury.⁴

Of these maxims, the wisdom of which has secured for them general acceptance,⁵ the second embodies a rule of absolute right from which the authorities are not at liberty to depart; the first⁶ and third address themselves to the legislative which frames the revenue laws; the fourth also appeals to the legislative wisdom, and is perhaps less observed than either of the others, especially in those states which have never burdened

¹ *State v. Philadelphia, etc. R. Co.*, 45 Md. 361.

² *Rohr v. Gray*, 80 Md. 274.

³ *Fortier v. Lamb*, 25 Can. S. C. R. 422.

⁴ *Smith's Wealth of Nations*, Bk. 4, ch. 2.

⁵ See *Mill's Pol. Econ.*, Bk. 5, ch. 2, § 2; *Tucker's Pol. Econ.*, ch. 14; *Rogers' Pol. Econ.*, ch. 21.

⁶ "Taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied since the foundation of the government. So, also, some authoritative thinkers, and

a number of economic writers, contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial:" *Knowlton v. Moore*, 178 U. S. 109. "The value of the things owned fixes the measure of the owner's ability to contribute in taxes towards the support of the government. This is an axiom of political economy no less than a fundamental provision of our organic law:" *Monticello Distilling Co. v. Mayor, etc.*, 90 Md. 416.

themselves with heavy debts or been tempted into wild and extravagant expenditures. In such states a tendency has been apparent to heavy accumulations of money in the state treasury; accumulations not only unjust to the people whom they deprive of the use of the money taken from them for considerable periods, but especially impolitic, as they tempt those having the custody of the funds to a use of them in loans—possibly in speculation,—which, when not strictly within the law, is always demoralizing and often leads to defalcations. The maxim would justify any state in having its treasury in condition at all times to meet all possible claims upon it, but it condemns exactions from the people in advance of any needs of the government.¹

All these maxims assume that the taxation is laid for the purpose of obtaining a revenue. Within the definitions given, the burden would not be taxation, if revenue were not the purpose. But in laying taxes other considerations not only are but ought to be kept in view; the question being always not exclusively how a certain sum of money can be collected for public expenditure, but how, when, and upon what subjects it is wise and politic to lay the necessary tax under the existing circumstances, having regard not merely to the replenishing of the public treasury, but to the general benefit and welfare of the political society, and taking notice, therefore, of the manner in which the laying and collection of the tax will affect the several interests in the state. And upon this it may be observed that:

1. In the laying of taxes, one purpose had in view may be to encourage one branch of industry or trade, though at the

¹ It is against the policy of the law to raise taxes faster than they are likely to be needed: *Midland v. Roscommon*, 39 Mich. 424; *Michigan Land, etc. Co. v. L'Anse*, 63 Mich. 700. The accumulation of money by taxation to meet a mere contingency—such as the liability to pay interest on railroad aid-bonds in escrow deliverable on the completion of the road—is not authorized: *Keystone Lumber Co. v. Bayfield*, 94 Wis. 491. And a statute is invalid in so far as it requires a present assessment of the special benefit hereafter to ac-

crué to property from a main sewer at an unknown period when a connecting sewer shall be laid: *Vreeland v. Bayonne*, 58 N. J. L. 126. On the same principle, excessive interest charges for delay in paying taxes, and heavy penalties exacted on redemption of land sold for taxes, are to be condemned. But the collection of part of an assessment will not be restrained on the ground that the money is not yet actually needed to pay bonds or interest: *Florer v. McAfee*, 135 Ind. 540.

expense of others; as where a tax is laid upon certain fabrics received from abroad by the exchanges of commerce for the sake of encouraging the domestic producer of similar articles, on whose industry the tax operates as a bounty.¹ Such a burden, however, may be so heavy that the market will not warrant its being paid, and in such case, instead of producing revenue, it merely precludes importation. But a law, which, under the name of taxation, has for its purpose only to embarrass and, perhaps, to destroy a certain branch of commerce, if enacted by a state, would look to the general police power for its justification; and, if enacted by the general government, would seem more properly to derive its force from the authority conferred upon the government to regulate commerce and the intercourse with foreign countries, than to an authority conferred for revenue purposes, which such a law would not aim or tend to subserve.²

2. They may be intended to discourage trades and occupations which may be useful and important when carried on by a few persons under stringent regulations, but exceedingly mischievous when thrown open to the general public and engaged in by many persons. An example is the heavy tax imposed in some states and in some localities of other states on those who engage in the manufacture or sale of intoxicating drinks. Two purposes are generally had in view in imposing such a tax: to limit the business to a few persons, in order to more efficient and perfect regulation, and also to produce a revenue. As no one will pay the tax who does not expect to be reimbursed the expense from the profits of sales, it is obvious that the heavier the tax the fewer can afford to pay it, and it may be made so heavy that no one can afford to pay it, and then it becomes prohibitory.³ A tax laid for the double pur-

¹ Tucker's Pol. Econ., ch. 14. Mr. Justice Story, in his treatise on the Constitution, § 965, asserts very broadly the power to tax for other purposes than for revenue.

² The power to tax involves the power to destroy: *McCulloch v. Maryland*, 4 Wheat. 316, 431, and other cases cited *ante*, p. 9. But it may be questioned whether this justifies an affirmative exercise of power that

has not revenue in view, but is only called a tax in order that it may be employed as an instrument of destruction. In the recent case of *Knowlton v. Moore*, 178 U. S. 41, 60, it is said that this principle is pertinent only when there is no power to tax a particular subject, and has no relation to a case where such right exists.

³ *Youngblood v. Sexton*, 32 Mich.

pose of regulation and revenue must be grounded in both the police and the taxing power; but the grant of a power to tax would not authorize the imposition of a burden in its nature and purpose prohibitory.¹

Taxes in kind. Taxes are generally demanded in money, and any tax law will be understood to require money when a different intent is not expressed.² But if the condition of any state, in the judgment of its legislature, shall require the collection of taxes in kind — that is to say, by the delivery to the proper officers of a certain proportion of products — or in gold or silver bullion, or in anything different from the legal tender currency of the country, the right to make the requirement is unquestionable, being in conflict with no principle of government, and with no provision of the federal constitution. Instances of taxes in kind occurred in the colonial period,³ and statutes requiring state taxes to be paid in gold and silver, to the exclusion of legal tender treasury notes, have been fully sustained in several of the states.⁴ The exigencies of govern-

406; *People v. Walling*, 53 Mich. 264. These and other cases hold that a prohibited business may be taxed. In the early case of *State v. Doon*, R. M. Charl. 1, the right to levy a tax of \$1,000 on faro tables for the purpose of prohibition was affirmed, although the payment of the tax would not legalize the use of the tables. Compare *Veazie Bank v. Fenno*, 8 Wall. 533; *Palmer v. State*, 88 Tenn. 563; *Blaufield v. State*, 103 Tenn. 593.

¹ *Ex parte Burnett*, 30 Ala. 461.

² *Amenia v. Stanford*, 6 Johns. 92; *Bryan v. Sundberg*, 5 Tex. 418; *Judd v. Driver*, 1 Kan. 455; *Sawyer v. Springfield*, 40 Vt. 305; *Shreveport v. Gregg*, 28 La. An. 836. As to taxes made payable in scrip, see *New Orleans v. Jackson*, 33 La. An. 1038. The running of the statute of limitations does not excuse a collector from taking scrip when the statute provides for it: *Daniel v. Askew*, 36 Ark. 487.

³ *Lane County v. Oregon*, 7 Wall.

71; *Williams' Case*, 3 Bland Ch. 186, 255; 2 *Rives' Life of Madison*, 146; *Parkman's Old Regime*, 302.

⁴ *Perry v. Washburn*, 20 Cal. 318, 350; *State Treasurer v. Wright*, 28 Ill. 509; *Trenholm v. Charleston*, 3 Rich. (N. S.) 347, 349; *Whiteaker v. Haley*, 2 Or. 128; *Lane County v. Oregon*, 7 Wall. 71; *People v. Hagar*, 52 Cal. 171; *Reclamation Dist. v. Hagar*, 6 Sawy. 567; *Hagar v. Reclamation Dist.*, 111 U. S. 701. *Contra*, *Haas v. Misner*, 2 Idaho 174; *Cruther v. Sterling*, 3 Idaho 306. A state cannot compel state scrip to be received in payment of county, school and district taxes; it not being money and the creditors of the municipalities not being compellable to receive it in payment: *Wells v. Cole*, 27 Ark. 603. But it has also been held that cities and counties cannot disregard the provisions of the acts of the legislature for the collection of revenue, because they are but its creatures and have no sovereignty; they have no power whatever to collect a single

ment have also in some cases seemed to require that the state should make the taxes levied for its municipalities payable in state obligations; and if it shall so provide, the municipalities have no alternative and must submit to the requirement.

A levy is sometimes made payable in labor; but this has commonly been restricted to the labor needed to keep the highways in repair; and while it is in its nature a tax, it partakes, to some extent at least, of a police regulation. Neither in common speech nor in the customary revenue legislation would a burden of this nature be understood as embraced in the term tax; and statutory provisions for assessment are not therefore applicable to it unless made so in express terms.¹

dollar of tax for any purpose whatever, unless it is conferred upon them by the legislature; their taxing powers are all derived from that source, and they are dependent upon its will for every cent of revenue they raise: *English v. Oliver*, 28 Ark. 317. See *Wallis v. Smith*, 29 Ark. 354. Under statutory authority a city may make its warrants receivable in payment of taxes: *Fuller v. Heath*, 89 Ill. 296.

¹*Galloway v. Tavares*, 37 Fla. 58. See *Amenia v. Stanford*, 6 Johns. 92; *Short v. State*, 80 Md. 392. In *Sawyer v. Alton*, 3 Scam. 127, a provision of the constitution that "the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession," was held not to prevent the levy of a poll tax payable in labor. In *Town of Pleasant v. Kost*, 29 Ill. 490, a highway assessment on property, payable in labor, was held not to be in the proper sense a tax. And see *Fox v. Rockford*, 38 Ill. 451; *Macomb v. Twaddle*, 4 Ill. App. 254; *State v. Topeka*, 36 Kan. 76; *State v. Halifax*, 4 Dev. 345. In *Amenia v. Stanford*, 6 Johns. 92, 93, where the question was whether one who had worked out a highway poll tax had gained a settlement

under a statute which made the settlement depend on the payment of a tax, it is said: "Taxes, in the popular and ordinary sense of the term (and in that sense laws are generally to be read), mean pecuniary contributions; and when the word 'paid' is added by way of defining it, the sense becomes more clear and certain." It was therefore held that a settlement was not gained by working out a highway assessment. And see *Starkesboro v. Hinesburgh*, 13 Vt. 215. Though the public burden assumes the form of labor, it is still taxation and must therefore be levied on some principle of uniformity; but it is a peculiar species of taxation, and the general terms "tax" or "taxation" would not usually be understood to include it: *Short v. State*, 80 Md. 392. An ordinance requiring all able-bodied male residents to work upon the streets for six days in each year does not impose a tax in the sense that such word is used in the constitution and statutes regarding the levy, assessment and collection of taxes; such a charge is, however, the imposition of a burden in the nature of a tax, and the town cannot pass it without legislative authority: *Galloway v. Tavares*, 37 Fla. 58. An assessment of \$4 or two days' work on each male

Taxes not debts. It sometimes becomes a question whether a tax can be regarded as a debt in the ordinary sense of that term,¹ so that the ordinary remedies for the collection of debts can be applied to it. In general it will be found that statutes imposing taxes make special provision for their collection, and do not apparently contemplate that any others will be necessary; but these may, nevertheless, fail; and the question then arises whether the tax must fail also, or whether resort may be had by the state to such remedies as would be available to individuals to enforce demands owing to themselves. But instances have occurred of tax laws which provided for laying the tax, but made no provision whatever for collection. In such case it may well be held that the legislature contemplated the enforcement of the tax by the ordinary remedies; and therefore, if the tax was assessed against an individual, that *assumpsit* or debt would lie for the recovery thereof.² The

resident over twenty-one and under sixty was held to be a poll tax, and as such forbidden by the constitution of Nevada: *Hassett v. Walls*, 9 Nev. 387. Compulsory labor upon roads with privilege of substitution or cash payment, held not to be a poll tax: *Short v. State*, 80 Md. 392; see *Galloway v. Tavares*, 37 Fla. 58. So, with a commutation tax in lieu of working on the streets: *Johnson v. Macon*, 62 Ga. 645. Requiring labor on streets is not unconstitutional as imposing involuntary servitude on persons not convicted of crime: *Ex parte Dessler*, 35 Kan. 678; *State v. Topeka*, 36 Kan. 76. Indictment for failing to work road: *State v. Pool*, 106 N. C. 698; *State v. Snyder*, 41 Ark. 226.

¹Taxes are not "debts" in the ordinary sense of that term: *Lane County v. Oregon*, 7 Wall. 71; *Meriwether v. Garrett*, 102 U. S. 472, 513; *Perry v. Washburn*, 20 Cal. 318; *Iowa Land Co. v. Douglas County*, 8 S. D. 491; *Danforth v. McCook County*, 11 S. D. 258; *Brule County v. King*, 11 S. D. 294; *Hanson County v. Gray*, 12 S. D. 124; *Dunlap v. Gallatin County*, 15 Ill. 7; *Jack v. Weiennett*,

115 Ill. 105; *Loeber v. Leininger*, 175 Ill. 484; *Gallup v. Schmidt*, 154 Ind. 196; *Marshall County v. Knoll*, 102 Iowa 573; *Com'rs v. First Nat. Bank*, 48 Kan. 561; *Jones v. Gibson*, 82 Ky. 561; *Slaughter v. Louisville*, 89 Ky. 112; *Schuck v. Lebanon (Ky.)*, 53 S. W. Rep. 655; *Geren v. Gruber*, 26 La. An. 694; *Shreveport v. Gregg*, 28 La. An. 836; *New Orleans v. Davidson*, 30 La. An. 541; *Morris v. Lalaurie*, 39 La. An. 47; *Augusta v. North*, 57 Me. 392; *Carondelet v. Picot*, 38 Mo. 125; *Nebraska City v. Gas Co.*, 9 Neb. 339; *State v. Yellow Jacket S. M. Co.*, 14 Nev. 220; *Camden v. Allen*, 26 N. J. L. 398; *Hewitt v. Traders' Bank*, 18 Wash. 326; *New Whatcom v. Roeder*, 23 Wash. 570; *Board of Education v. Old Dominion, etc. Co.*, 18 W. Va. 444; *Hinchman v. Morris*, 29 W. Va. 673; *Riddell's Assignment*, 93 Wis. 564. It has been held that authority to the vendee of a stock of goods to pay the vendor's "creditors" from funds collected justifies the vendee's paying taxes assessed upon stock prior to the purchase: *Tanner v. Page*, 106 Mich. 155.

²*Baltimore v. Howard*, 6 H. & J. 383; *Mayor v. McKee*, 2 Yerg. 167;

same reasoning would support a proceeding in equity to enforce a lien for the tax when assessed, not against an individual, but against property; and some courts have gone so far as to hold that the imposition and assessment of a tax create a legal obligation to pay, upon which the law will raise an *assumpsit*, although the statute has given a special remedy.¹ But in general, the conclusion has been reached that when the statute undertakes to provide remedies, and those given do not embrace an action at law, a common-law action for the re-

Rutledge v. Fogg, 3 Cold. 554; Irwin's Succession, 33 La. An. 63; State v. Severance, 55 Mo. 378. See Haas v. Misner, 2 Idaho 174; San Francisco Gas Co. v. Brickwell, 62 Cal. 641; Dubuque v. Illinois Cent. R. Co., 39 Iowa 56; Burlington v. Burlington & M. R. Co., 41 Iowa 134; Marshall County v. Knoll, 102 Iowa 573; Eyke v. Lange, 104 Mich. 26; State v. New York, N. H. & H. R. Co., 60 Conn. 326; Gatling v. Com'rs, 92 N. C. 536. Where an action lies, the statute of limitations applies to bar the remedy after the statutory period: Burlington v. Burlington & M. R. Co., 41 Iowa 134; State v. Yellow Jacket S. M. Co., 14 Nev. 220. And the time may be extended by statute any time before it has fully run: State v. Hernan, 70 Mo. 420.

¹ Dugan v. Baltimore, 1 Gill & J. 499; State v. Steamship Co., 13 La. An. 497; Succession of Mercier, 42 La. An. 1135; State v. Georgia Co., 112 N. C. 34; Burlington v. Burlington & M. R. Co., 4 Iowa 134; Perry County v. Selma, etc. R. Co., 58 Ala. 546; Anniston v. Southern R. Co., 112 Ala. 557. Early cases in Illinois held that the remedy by distress was not necessarily exclusive: Ryan v. Gallatin County, 14 Ill. 78; Dunlap v. Gallatin County, 15 Ill. 7; Geneva v. Cole, 61 Ill. 398. But see Loeber v. Leininger, 175 Ill. 484. In Louisiana it seems that an action will lie for a special assessment notwithstanding there is a

lien on the land: New Orleans v. Day, 29 La. An. 416. And in Maryland such an assessment is collectible as a debt against the estate of the deceased adjoining owner: Gould v. Mayor, etc., 59 Md. 378. The United States are not precluded by anything in the revenue act of 1866 from employing common-law remedies for the collection of their dues: Savings Bank v. United States, 19 Wall. 227. *Assumpsit* lies against an importer for customs dues, though the government has a lien on the goods and a bond for the taxes: Meredith v. United States, 13 Pet. 486. A statute punishing by fine persons who do business without a license does not preclude the city's suing in debt to recover such license: State v. Fleming, 112 Ala. 179. In Tennessee a privilege tax is a debt and may be sued as such: State v. Northville Savings Bank, 16 Lea 111. There the assessment of a tax creates a personal debt against the person assessed: Nashville v. Cowan, 10 Lea 209; East Tenn., V. & G. R. Co. v. Morristown (Tenn. Ch. Ap.), 35 S. W. Rep. 771. In New Hampshire taxes are now — by statute — collectible by suit like other debts: Boody v. Watson, 64 N. H. 162. And it is provided by statute in Connecticut that "all taxes properly levied shall become a debt due from the person . . . against whom they are respectively assessed." See State v. Travelers' Ins. Co., 70 Conn. 590.

covery of the tax as a debt will not lie.¹ The assessment of the tax, though it may definitely and conclusively establish a demand for the purposes of statutory collection, does not constitute a technical judgment;² and the taxes are not "contracts between party and party, either express or implied; but they are the positive acts of the government, through its various agents, binding upon the inhabitants, and to the making and enforcing of which their personal consent individually is not required."³ They do not draw interest, as do sums of money

¹ Ruddock v. Gordon, Quincy's Rep. 58; Andover Turnpike v. Gould, 6 Mass. 40; Pierce v. Boston, 3 Met. 520; Crapo v. Stetson, 8 Met. 393; Appleton v. Hopkins, 5 Gray 530; Home Savings Bank v. Boston, 131 Mass. 277; Newport, etc. Co. v. Douglass, 12 Bush 673; Johnston v. Louisville, 11 Bush 527; Camden v. Allen, 26 N. J. L. 398; Webster v. Seymour, 8 Vt. 135, 140; Shaw v. Peckett, 26 Vt. 482; Packard v. Tisdale, 50 Ma. 376; State v. Piazza, 66 Miss. 426; Carondelet v. Picot, 38 Mo. 125; State v. Snyder, 139 Mo. 549; Loeber v. Leininger, 175 Ill. 484; Perry v. Washburn, 20 Cal. 318; Richards v. Stoggsdell, 21 Ind. 74; Richards v. Com'rs, 40 Neb. 45; McCall v. Lorrimer, 4 Watts 351; Miller v. Hale, 26 Pa. St. 432; McKeesport v. Fidler, 147 Pa. St. 532; Lane County v. Oregon, 7 Wall. 71; Board of Education v. Old Dominion, etc. Co., 18 W. Va. 441; Brule County v. King, 11 S. D. 294; Hanson County v. Gray, 12 S. D. 124; Montezuma Valley, etc. Co. v. Bell, 20 Colo. 175; Du Bignon v. Brunswick, 106 Ga. 317. Compare Durant v. Supervisors, 26 Wend. 66; Meriwether v. Garrett, 102 U. S. 572; Crismon v. Reich, 2 Utah 111; State v. Yellow Jacket, etc. Co., 14 Nev. 220; Fari-bault v. Misener, 20 Minn. 396; Hibbard v. Clark, 56 N. H. 155; Dreake v. Beasley, 26 Ohio St. 315; Apperson v. Memphis, 2 Flip. 363; Board of Com'rs v. First Nat. Bank, 48 Kan. 561. In Michigan an action for taxes lies only when expressly given by

statute: Staley v. Columbus, 36 Mich. 38; McCallum v. Bethany, 42 Mich. 457; Detroit v. Jepp, 52 Mich. 458; Croskery v. Busch, 116 Mich. 288. So in Kentucky: Louisville Water Co. v. Commonwealth, 89 Ky. 244; Baldwin v. Hewett, 88 Ky. 673. And see Sherwin v. Savings Bank, 137 Mass. 444. In Iowa the tax imposed by the mulct law on liquor dealers creates a personal liability enforceable by an ordinary action, though there is also given a lien therefor on the real estate whereupon the liquor is sold, and on all personal property connected with the business: Marshall County v. Knoll, 102 Iowa 573. It has been decided in Vermont that if a tax be duly assessed against a *feme sole* who afterwards marries, the husband's property, including the personal property acquired by the marriage, is not liable to be distrained for the satisfaction of the tax: Sumner v. Pinney, 31 Vt. 717.

² Johnson v. Howard, 41 Vt. 122; Pierce v. Boston, 3 Met. 520; Morris v. Lalaurie, 39 La. An. 47; Hibbard v. Clark, 56 N. H. 155. But in North Carolina a tax list is a judgment, and the tax is a debt collectible by proceedings in the nature of a creditor's bill: State v. Georgia Co., 112 N. C. 34.

³ Pierce v. Boston, 3 Met. 520; Webster v. Seymour, 8 Vt. 135; Johnson v. Howard, 41 Vt. 122; Finnegan v. Fernandina, 15 Fla. 379; Edmonson v. Galveston, 53 Tex. 157; Perry v. Washburn, 20 Cal. 318; Morris v.

owing upon contract; but only when it is expressly given.¹ They cannot be assigned as debts,² or be proved in bankruptcy as such;³ nor, if uncollected, are they assets which can be seized by attachment or other judicial process, and subjected to the payment of municipal indebtedness.⁴ They are not the subject of set-off, either on behalf of the state or the municipality for which they are imposed, or of the collector,⁵ or on behalf of the person taxed, as against such state, municipality or collector.⁶ Taxes are not within a statute exempting certain

Lalaurie, 39 La. An. 47; De Pauw v. New Albany, 22 Ind. 206; Jones v. Gibson, 82 Ky. 561.

¹ Shaw v. Peckett, 26 Vt. 482; Danforth v. Williams, 9 Mass. 324; Perry v. Washburn, 20 Cal. 318; Haskell v. Bartlett, 34 Cal. 281; Himmelman v. Oliver, 34 Cal. 246; People v. Northern Pac. Coast R. Co., 68 Cal. 551; People v. Central Pac. R. Co., 105 Cal. 576; Perry County v. Selma, etc. R. Co., 65 Ala. 391; Louisville & N. J. R. Co. v. Commonwealth, 89 Ky. 531; Anderson v. Mayfield, 93 Ky. 230; Illinois Cent. R. Co. v. Adams (Miss.), 29 South Rep. 996; Edmonson v. Galveston, 53 Tex. 157; Western Union Tel. Co. v. State, 55 Tex. 314; Camden v. Allen, 26 N. J. L. 398; Belvidere v. Warren R. Co., 34 N. J. L. 193; Brenner v. Farrier, 47 N. J. L. 75; People v. Gould, etc. Tel. Co., 98 N. Y. 67; New Whatcom v. Roeder, 22 Wash. 570; Rockland v. Ulmer, 87 Me. 357. A statute authorizing a city to collect interest on overdue ordinary taxes does not authorize the collection of interest on an assessment for a public improvement: Sargent v. Tuttle, 67 Conn. 162. See Mall v. Portland, 35 Or. 89. As to interest on unpaid license fees, see Travelers' Ins. Co. v. Fricke, 99 Wis. 367.

² McInerny v. Reed, 23 Iowa 410; Hinchman v. Morris, 29 W. Va. 673. A claim against an estate for taxes is not a debt within the statute providing for the discharge of insolvents' debts by voluntary assignment:

Riddell's Assignment, 93 Wis. 564. Such a claim takes precedence of ordinary debts against assigned property: Dunlap v. Gallatin County, 15 Ill. 7; Jack v. Weiennett, 115 Ill. 105. But a personal tax is in Minnesota a debt for the purpose of proof against and payment from a decedent's estate: Jefferson's Estate, 35 Minn. 215.

³ In re Duryee, 2 Fed. Rep. 68.

⁴ Meriwether v. Garrett, 102 U. S. 472.

⁵ Pierce v. Boston, 3 Met. 520; Howe Savings Bank v. Boston, 131 Mass. 277; Johnson v. Howard, 41 Vt. 122. See McCracken v. Elder, 34 Pa. St. 239; Hibbard v. Clark, 56 N. H. 155; Cobb v. Elizabeth City, 73 N. C. 1; Nebraska City v. Gas Co., 9 Neb. 339. But a state may make municipal obligations a set-off to taxes, and there is no constitutional objection to doing so: Amy v. Shelby Co. Taxing Dist., 114 U. S. 387.

⁶ New Orleans v. New Orleans Water Works, 36 La. An. 432; Morris v. Lalaurie, 39 La. An. 47; Cartersville Water Works Co. v. Cartersville, 89 Ga. 689; Trenholm v. Charleston, 3 S. C. (N. S.) 394; Himmelman v. Spanagel, 39 Cal. 389; Hawkins v. Sumter County, 57 Ga. 166; Miller v. Wisener, 45 W. Va. 59. "To hold that a tax is liable to set-off would be utterly subversive of the power of government, and destructive of the very end of taxation:" Finnegan v. Fernandina, 15 Fla. 379. It is no defense to the payment of a

timber claims from debts;¹ nor are proceedings to enforce them barred by the ordinary statutes of limitation.² The law abolishing imprisonment for debt has no application to taxes; and the remedies for their collection may include an arrest if the legislature shall so provide.³

The repeal of a tax law puts an end to all right to proceed to a levy of taxes under it, even in cases already commenced, unless the right is reserved in the repealing statute;⁴ and statutory remedies for the enforcement of a tax are gone when the statute is repealed without an express saving.⁵ But in

tax that an overpayment has been made in the tax of a former year: *New Orleans v. Davidson*, 30 La. An. 541. A similar point is decided in *Wayne v. Savannah*, 56 Ga. 448. An excess of taxes cannot be made a set-off in favor of the land-owner against taxes thereafter assessed against the land: *McVeigh v. Lanier*, 50 Ark. 384. A railroad company cannot offset county taxes with past-due coupons of railroad-aid bonds: *Morgan v. Pueblo, etc. R. Co.*, 6 Colo. 478. The fact that a county owes a person taxed a considerable sum is no ground for enjoining payment of a county tax. County authorities have no power to contract in advance of the assessment of a tax, that when levied it shall be considered paid by the county indebtedness: *Scobey v. Decatur Co.*, 72 Ind. 551. One cannot have the collection of city taxes against him enjoined on the ground that the city is indebted to him, and has in its treasury a fund which cannot be legally applied otherwise than by paying his debt: *Cartersville Water Works v. Cartersville*, 89 Ga. 689. The surety of a sheriff who pays into the treasury taxes due and unpaid by his principal cannot be subrogated to the state's rights against the delinquent taxpayers: *Jones v. Gibson*, 82 Ky. 561. No set-off of independent claims is admissible against federal taxes, even when

they are collected by suit: *United States v. Pacific R. Co.*, 4 Dill. 66. Statutory right to set off city warrants against tax: see *Western Town Lot Co. v. Lane*, 7 S. D. 599.

¹ *Danforth v. McCook County*, 11 S. D. 258.

² *Iowa Land Co. v. Douglas County*, 8 S. D. 491.

³ *Appleton v. Hopkins*, 5 Gray, 530; *Harris v. Wood*, 6 T. B. Monr. 641; *Charleston v. Oliver*, 16 S. C. 47; *McCaskell v. State*, 53 Ala. 511; *Delinquent Poll Tax*, 21 R. I. 582. See *post*, ch. XIV. A property tax is not a debt within an act of congress exempting soldiers from arrest for any "debt or contract:" *Webster v. Seymour*, 8 Vt. 135.

⁴ *Ross v. Lane*, 11 Miss. 695; *Abbott v. Britton*, 23 La. An. 511. If, after an assessment, the constitution of the state is so amended as to limit the rate of tax that may be levied, a subsequent levy upon the assessment must keep within the limit: *Ketchum v. Pacific R. Co.*, 4 Dill. 41.

⁵ *Mount v. State*, 6 Blackf. 25; *McQuilkin v. Doe*, 8 Blackf. 581. This is so, even as to assessments in process of collection: *Marion, etc. Gravel Road Co. v. Sheeth*, 53 Ind. 35. See *Commonwealth v. Standard Oil Co.*, 101 Pa. St. 119. If a statute giving a right of action is repealed without any saving of pending actions, the right is gone as to such

general, when a tax system is revised, with a repeal of the former law, it is safe to assume that the legislative intent is that the new enactment shall be of prospective force only, and shall not disturb existing valid assessments.¹

Taxation and protection reciprocal. It has been said already that the taxing power of a state is co-extensive with its sovereignty, and that whatever objects of government are within its reach are subject to it, and may be made the basis of levies.² It is commonly said that taxation and protection are reciprocal;³ and this, if rightly understood, is correct,

actions: *St. Joseph County Court v. Ruckman*, 57 Ind. 96; *French v. State*, 53 Miss. 651. Under the general statute of Kentucky for the construction of laws, which provides that no new law shall be construed to repeal a former law as to any right accrued or claim arising under the former law before the new law takes effect, the right to sue for delinquent taxes accrued under a statute is not taken away even by the repeal of the statute: *Louisville Water Co. v. Commonwealth*, 34 S. W. Rep. 1064.

¹ In *Warren R. Co. v. Belvidere*, 35 N. J. L. 587, speaking of a tax-law which was repealed after tax was laid, it is said: "Such repeal does not affect the tax assessed. That was a matter closed by the assessment, and, besides, has been concluded by final judgment since the repeal." But in that case the collection of the tax was provided for not by the law which was repealed, but by a general law which remained in force. See *Belvidere v. R. Co.*, 34 N. J. L., 193. Also *Gorley v. Sewell*, 77 Ind. 316; *Clegg v. State*, 42 Tex. 605; *Pacific, etc. Tel. Co. v. Commonwealth*, 66 Pa. St. 70. It is competent for the legislature, after an assessment has been made for municipal taxation, to repeal the law and refer the power to make the assessment to another authority, even though the

constitution forbids retrospective laws: *State v. St. Louis, etc. R. Co.*, 9 Mo. App. 532. In *State v. Waterville Savings Bank*, 68 Me. 515, an assessment for which an action was given was held to remain collectible notwithstanding the repeal of the statute under which it was laid. See *Smith v. Auditor General*, 20 Mich. 398. As against the officer or municipality the legislature may undoubtedly take away the right to collect a tax even after proceedings begun: *Selma, etc. Assoc. v. Morgan*, 57 Ala. 33. A tax is not defeated by the land for which it was levied being set off from the city levying it, but it may be enforced against the owner afterwards: *Deason v. Dixon*, 54 Miss. 585.

² The rules for the taxation of property brought within the limits of a state must be determined by the laws thereof: *State v. Deering*, 56 Minn. 24. The state may tax a bridge over a navigable river within its limits even though it does not own the soil in the bed of the river upon which the piers of the bridge rest: *Henderson Bridge Co. v. Henderson City*, 173 U. S. 592.

³ Vattel says that the right to tax an individual results from the general protection afforded to him and his property: *Bk. 1, ch. 20*. See *Eggleston v. Charleston*, 1 S. C. Const. R. 45; *Bank of U. S. v. State*, 12 S. & M. 456;

though some subjects receive the protection of government which are not taxable, and some may be taxed though not protected. The vessels of a foreign nation or of its citizens and the property in them, and the citizens themselves when temporarily in the country for business or pleasure, are protected by our laws, but not taxable under them; the consideration for the exemption being the like exemption of our own vessels, property and citizens when in foreign lands. Ambassadors and others connected with the public service of foreign countries, though residing here in such service, are also exempt as representatives of the government which accredits or employs them,¹ but alienage itself does not work an exemption if the alien is domiciled in the country, so far at least as he has property there to be protected by its laws;² and tangible property in the country, as stock in trade or manufacture, or for sale, is taxable irrespective of the residence or allegiance of owners.³ But a very large proportion of the subjects of government are never taxed at all, though they are entitled to protection and are in fact protected exactly as if they were. This is the case generally with all infants and married women not having independent property or business, and with many others who do not come within the rules which the state has prescribed for the apportionment of this species of burden. These rules are prescribed by the state on a consideration of

Warden v. Supervisors, 14 Wis. 618; *De Pauw v. New Albany*, 22 Ind. 204; *Commonwealth v. Standard Oil Co.*, 101 Pa. St. 119; *Berlin Mills v. Wentworth's Location*, 60 N. H. 156; *Norris v. Waco*, 57 Tex. 635; *Jefferson's Estate*, 35 Minn. 215.

¹ *Vattel*, Bk. 1, ch. 19, § 216; *Brown v. Smith*, 15 Beav. 444; *Attorney-General v. Napier*, 6 Ex. 217. It is not the mere employment, however, that exempts them, but the fact that they are resident in the county only for the purposes of the employment and not domiciled there. Persons domiciled in a country, but made use of by other countries as consular agents, are taxable where domiciled.

² Personal allegiance has no neces-

sary connection with the right of taxation. An alien may be taxed as well as a citizen: *Mager v. Grima*, 8 How. 490; *Witherspoon v. Duncan*, 4 Wall. 210. As to what amounts to a surrender of domicile, see *Borland v. Boston*, 132 Mass. 89. A citizen of another state employed for an indefinite period as a laborer for a local corporation was held liable for road duty: *State v. Johnston*, 118 N. C. 1188.

³ See *post*, ch. XII. The authority of a taxing district to require all classes of property sheltered by it to pay its ratable proportion of maintaining the government is unaffected by the owner's residence: *Gallup v. Schmidt*, 154 Ind. 196.

what is wisest, and most for the general good; but the exemptions they give are only temporary and conditional, and may be changed at any time. Even as regards the exempted subjects, taxation and protection may be said to be reciprocal in the sense that those who are protected are liable to taxation whenever the state shall see fit to impose it. On the other hand, one purpose of taxation sometimes is to discourage a business, and perhaps to put it out of existence; and it is taxed without any idea of protection attending the burden. This has been avowedly the purpose in the case of some federal taxes,¹ while in others the burden has been laid on subjects which by state legislation were put out of the protection of the law. The taxes have nevertheless been sustained.² The persons who pay these taxes pay them, therefore, not for protection in respect to the subjects taxed, but in consideration of the general benefits of organized society, which are supposed to be infinitely more to every citizen than the privilege of following any particular trade or calling.

Where a non-resident is owner of tangible property within the state, and the state imposes taxes upon it, the tax is not a charge against the owner personally, but must be enforced against the property itself. The state has no jurisdiction to assess a tax as a personal charge against non-residents;³ neither can the personalty of a non-resident be taxed unless it has an

¹ *Veazie Bank v. Fenno*, 8 Wall. 533.

² See *License Tax Cases*, 5 Wall. 462; *Pervear v. Commonwealth*, 5 Wall. 475; *Commonwealth v. Holbrook*, 10 Allen 200; *Block v. Jacksonville*, 36 Ill. 301; *Youngblood v. Sexton*, 32 Mich. 406; *People v. Walling*, 53 Mich. 264; *Adler v. Whitbeck*, 44 Ohio St. 539.

³ *Dow v. Sudbury*, 5 Met. 73; *Herрман v. Stowers*, 43 Me. 497; *Graham v. St. Joseph T'p*, 67 Mich. 652; *People v. Supervisors*, 11 N. Y. 563; *New York v. McLean*, 57 App. Div. (N. Y.) 601; *St. Paul v. Merritt*, 7 Minn. 198; *Catlin v. Hull*, 21 Vt. 152; *Dewey v. Des Moines*, 173 U. S. 193. Persons are not amenable to the taxing

power of the state when neither they nor any of their property are within the state or subject to its jurisdiction: *Augusta v. Kimball*, 91 Me. 605. A non-resident who has voluntarily returned some of his property for taxation does not thereby consent to be taxed for all; and if the assessor taxes him for more, he need not appeal from the assessment, but may contest the collection: *Phelps v. Thurston*, 47 Conn. 477. Compare *Hilton v. Fonda*, 86 N. Y. 339. A foreign corporation assessed by the mercantile appraiser without authority may treat the assessment as a nullity, and need not appeal therefrom: *Commonwealth v. American Tobacco Co.*, 173 Pa. St. 531.

actual *situs* within the state, so as to be under the protection of its laws.¹ The mere right of a foreign creditor to receive from his debtor within the state the payment of his demand cannot be subjected to taxation within the state.² "It is a right that is personal to the creditor where he resides, and the residence or place of business of his debtor is immaterial. The power of taxation, however vast in its character, and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state.³ These subjects are persons, property and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them the taxation may be exercised in a great variety of ways. It may touch property in every shape, in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures and in transportation. Unless restrained by provisions of the federal constitution, the power of the state as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."⁴ These are conceded or adjudged principles, and have ceased to be the subject of discussion or argument. Corporations, it is also conceded, may be taxed like natural persons on their property and business.⁵ But debts owing to foreign creditors by either cor-

¹ That personal property may be taxed where it is, though the owner is not a resident, see chs. III and XII, *post*.

² *Liverpool, etc. Ins. Co. v. Board*, 44 La. An. 760; *Railey v. Board*, 44 La. 765; *Graham v. St. Joseph Tp*, 67 Mich. 652; *Commonwealth v. Lehigh Valley R. Co.*, 186 Pa. St. 235.

³ *Baltimore v. Hussey*, 67 Md. 112; *Winnipiseogee Lake Manuf. Co. v. Gifford*, 64 N. H. 337; *In re Swift*, 137 N. Y. 77.

⁴ *State Tax on Foreign Held Bonds*, 15 Wall. 319; *Savings Society v. Multnomah County*, 169 U. S. 421;

Butler v. Saginaw Supervisors, 26 Mich. 22; *Voigt v. Detroit*, 123 Mich. 547; *Minneapolis & N. Elevator Co. v. Trail County*, 9 N. D. 213; *In re McPherson*, 104 N. Y. 306. See *Oliver v. Washington Mills*, 11 Allen, 268; *De Vignier v. New Orleans*, 4 Woods 206; *Boyd v. Wiggins*, 7 Okl. 85; *Washington Iron Works Co. v. King County*, 20 Wash. 150.

⁵ *People v. Detroit & P. R. Co.*, 1 Mich. 458; *Liverpool, etc. Ins. Co. v. Board of Assessors*, 44 La. An. 760. It is a part of the Californian constitution that corporate franchises are property, and must be taxed in some

porations or individuals are not the subject of taxation. The creditor cannot be taxed, because he is not within the jurisdiction, and the debts cannot be taxed in the debtors' hands, through any fiction of the law which is to treat them as being, for this purpose, the property of the debtors. They are not property of the debtors in any sense; they are the obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, "but to call them property in the hands of the debtors is simply to misuse terms."¹ Shares in a corporation are also the shares of the stockholder wherever he may have his domicile, and if taxed to him as his personal estate are properly taxable by the jurisdiction to which his person is subject, whether the corporation be foreign or domestic.² But the state which grants corporate powers, or consents to their being exercised within its limits when the corporate grant is by some other sovereignty, may annex to the grant or consent such terms in respect to taxation as it shall deem expedient;³ and it may, and sometimes does, pro-

manner proportionately to their value: *San Jose Gas Co. v. January*, 57 Cal. 614; *Spring Valley Co. v. Schottler*, 62 Cal. 71.

¹ *State Tax on Foreign Held Bonds*, 15 Wall. 300, 319, overruling several Pennsylvania cases. See also *Hayne v. Deliesseline*, 3 McCord 374; *Oliver v. Washington Mills*, 11 Allen 268; *De Vignier v. New Orleans*, 4 Woods 206; *Commonwealth v. Chesapeake & O. R. Co.*, 27 Grat. 344; *Bullock v. Guilford*, 59 Vt. 516; *Barber Asphalt Paving Co. v. New Orleans*, 41 La. An. 1015; *Liverpool, etc. Ins. Co. v. Assessors*, 44 La. An. 760; *Bailey v. Assessors*, 44 La. An. 765; *Clason v. New Orleans*, 46 La. An. 1; *Senour v. Ruth*, 140 Ind. 318; *Buck v. Miller*, 147 Ind. 586; *Baltimore v. Hussey*, 67 Md. 112; *State v. Smith*, 68 Miss. 79; *Myers v. Seaberger*, 45 Ohio St. 232; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406; *Holland v. Com'rs*, 15 Mont. 460; *In re Bronson*, 150 N. Y. 1; *Territory v. Delinquent Tax List (Ariz.)*, 24 Pac. Rep. 182. In

the absence of express authority, a city empowered to tax "all property" cannot tax its own bonds: *Mayor of Macon v. Jones*, 67 Ga. 489. As to the taxation of intangible property owned by non-residents, see, further, chs. III and XII, *post*.

² *Great Barrington v. County Com'rs*, 16 Pick. 572; *Newark City Bank v. Assessor*, 30 N. J. L. 13; *State v. Branin*, 23 N. J. L. 484; *State v. Bentley*, 23 N. J. L. 532; *Whitsell v. Northampton County*, 49 Pa. St. 526; *North Carolina R. Co. v. Com'rs*, 91 N. C. 454; *Greenleaf v. Board of Review*, 184 Ill. 226.

³ *Paul v. Virginia*, 8 Wall. 168; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566; *Ducat v. Chicago*, 10 Wall. 410; *Pembina, etc. Co. v. Pennsylvania*, 125 U. S. 181; *Bell's Gap R. Co. v. Commonwealth*, 134 U. S. 232; *Horn Silver Mining Co. v. New York*, 143 U. S. 305; *Jennings v. Coal Ridge, etc. Co.*, 147 U. S. 147; *Commonwealth v. New York, L. E. & W. R. Co.*, 129 Pa. St. 463. The

vide that the shares of stockholders shall be taxed at the place of corporate business, and the tax be paid by the corporation for all its members.¹ The state may give the shares of stock held by individual stockholders a special or particular *situs* for the purposes of taxation, and may provide special modes for the collection of the tax levied thereon; and it is often convenient, as well as perfectly just, to take that course.²

If it were practicable to do so, the taxes levied by any government ought to be apportioned among the people according to the benefit which each receives from the protection the government affords him; but this is manifestly impossible. The value of life and liberty, and of the social and family rights and privileges, cannot be measured by any pecuniary standard; and by the general consent of civilized nations, income or the sources of income are almost universally made the basis upon which the ordinary taxes are estimated. This is upon the assumption, never wholly true in point of fact, but sufficiently near the truth for the practical operations of government, that the benefit received from the government bears some proportion to the property held, or the revenue enjoyed under its protection; and though this can never be arrived at with accuracy, through the operation of any general rule, and would not be wholly just if it could be, experience has given us no better standard, and it is applied in a great variety of forms, and with more or less approximation to justice and equality. But, as before stated, other considerations are always admissible; what is aimed at is, not taxes strictly just, but such taxes as will best subserve the general welfare of the political society.³

The taxes governments have been accustomed to lay.⁴ In modern times, governments have been accustomed to levy a

absolute power of exclusion includes the right to allow a conditional and restricted exercise of corporate powers within the state: *Pembina, etc. Co. v. Pennsylvania*, 125 U. S. 181.

¹ *Baltimore v. City Passenger R. Co.*, 57 Md. 31. Non-resident stockholders, by becoming or remaining members of a corporation after the passage of an act taxing their shares, assent to such tax so as to render

them liable to reimburse the corporation where it has paid the tax: *State v. Travelers' Ins. Co.*, 70 Conn. 590.

² *State v. Travelers' Ins. Co.*, 70 Conn. 590; *American Coal Co. v. County Com'rs*, 59 Md. 185; *Baltimore v. City Passenger R. Co.*, 57 Md. 31.

³ *Thomas v. Gay*, 169 U. S. 264, 280.

⁴ The state may raise revenue by

great variety of taxes; sometimes relying upon a single kind for all the needs of the state, and sometimes levying a number of different kinds with a view to distribute the burden more equally or more to the general acceptance. None of these can invariably operate with justice, but all have advantages that may make one desirable under one set of circumstances, and another the best when circumstances have changed. Those which have been most common will be briefly referred to.

Capitation Taxes. These are not a common resort in modern times;¹ and only in a few cases could they be either just or politic. As they regard only the person, they must be shared equally by all, except under governments where privileged orders are recognized, and where they might be graded according to the orders to which the several persons taxed belong. If the tax is graded by property, it is obviously something besides a capitation tax.

Land Taxes. These may be measured by the production, by the rent, or by the value. The first method has seldom been resorted to in enlightened periods.² To some extent it would operate as a discouragement to industry; and, while it might not be burdensome to the cultivators of very productive estates, it might preclude poor lands, whose production would barely pay for cultivation, from being cultivated at all; in other words,

capitation taxes, by special taxes upon carriages, horses, servants, dogs, franchises, and upon every species of property, and upon all kinds of business and trades: In *re McPherson*, 104 N. Y. 306.

¹The taxes assessed by this name have not always been taxes levied on persons, but sometimes taxes exacted from districts or provinces, and measured by the *capita*. Such were the capitation taxes levied under the Roman Empire, in apportioning which among individuals, one might represent several *capita*, according to his wealth in land, while others escaped the tax entirely: Gibbon's *Decline and Fall*, ch. 17. In providing for a labor tax for the repair of

highways, it is common to assess every able-bodied male adult one or more days' labor as a capitation tax. But sometimes poll taxes are levied for school purposes. The requirement of a state constitution that the poll tax shall be "applied exclusively in aid of the public school fund," will not preclude charging against it the cost of collection: *Shaver v. Robinson*, 59 Ala. 195. A statute was held void, as imposing, in the form of road service, a capitation tax in excess of the one prescribed by the constitution: *Proffit v. Anderson* (Va.), 20 S. E. Rep. 887.

²It was made use of under the Roman Empire: Gibbon's *Decline and Fall*, ch. 17. It has been occa-

would be equal to the whole rental value. A tax, measured by rents, will usually come nearer to being a tax on the actual revenue of the land proprietor; and this standard is more common. A variety of land taxes, under different names, has been levied in England, merging at last in a general land tax, measured by rent, and apportioned to the municipal divisions. In this country land taxes are commonly laid by value. This is subject to some objections. In order to insure equality, it is necessary, in a new and rapidly improving country, that there should be frequent valuations, and this requires a great official force and involves heavy expense. The apportionment of this expense among towns or other small divisions of territory, the people of which are allowed to choose the officers, reconciles them to the burden, and, in many of the states, a new valuation is made annually. An objection, theoretically more serious, is that a tax by assessed value is often (where the land is poor and unproductive, or where it is wild and uncultivated) a tax which is paid from capital instead of from revenue. A tax to be thus paid cannot long continue, and is seldom to be purposely laid; but, in particular instances, almost any tax will be such. And in this country where a considerable portion of the community invest in lands with a view to profit from the rise in value, unproductive and uncultivated lands cannot be exempted from taxation because of the hardship of individual cases, without exempting a large portion of the wealth of the state now legitimately invested where it is insuring large profits to the owner.

Taxes on Houses. These, except where the houses are treated as appurtenances to lands, have been measured by rents, and sometimes by hearths and windows. A hearth tax was obnoxious, because, among other reasons, it involved inquisitorial visits of officers to inspect rooms; and both hearth and window taxes tended to limit among the poor the use of these conven-

sionally employed in recent times. Tithes for the support of the Established Church in England were so measured.

Where land is assessed for taxation as such, it is not competent at the same time to assess, for separate

taxation, rents which are to accrue thereafter from the same land, since rent to grow due is part of the land itself; an incident to it; and would therefore be included in the assessment of the land: *Scully v. People*, 104 Ill. 349.

iences, so important not only to comfort, but to health. Both are now abolished in England.

*Taxes on Income.*¹ These may be on all incomes, or on all with such exemption as will enable the taxpayer, in a frugal manner, to support himself and his family.² The latter is the course usually adopted, and, in some cases, incomes in excess of the exemption have been taxed a larger percentage as they increased in amount. The reasons which favor this discrimination would also justify a heavier proportionate tax on the thrifty classes in other cases; and the principle once admitted, there is no reason but its own discretion why the legislature should stop short of imposing the whole burden of government on the few who exhibit most energy, enterprise and thrift. Such a discrimination is a penalty on the possession of these qualities. But any income tax is also objectionable, because it is inquisitorial, and because it teaches the people evasion and fraud. No means at the command of the government have ever enabled it to arrive with anything like accuracy at the incomes of its citizens, and they resist its inquisitions in all practical modes, not only because they desire to avoid as far as possible the public burdens which they are certain are not to be equally imposed, but also because they are not willing that their private affairs and the measure of their prosperity should be exposed to the public.³ The taxes imposed on incomes by the general government during and immediately following the war between the states were escaped by a large proportion of those who should have paid them, and the assessors' returns were a

¹ The state may tax income except as to any part thereof derived from non-taxable securities: Opinion of Justices, 53 N. H. 634. Income taxes laid by the national government must be apportioned among the several states according to representative population: *Pollock v. Farmers' Loan, etc. Co.*, 157 U. S. 429, 158 U. S. 601. A tax imposed on oyster-tong men according to the amounts of their sales is not an income tax within the meaning of a constitutional provision exempting incomes under a certain amount from taxation: *Commonwealth v. Brown*, 91

Va. 762. Under a statute providing that certain officers shall pay a tax on compensation received in excess of \$2,000, where an officer holds several offices only one salary should be deducted from his gross receipts: *Commonwealth v. Anderson*, 178 Pa. St. 171.

² *New Orleans v. Fourchy*, 30 La. An. 910.

³ Gibbon refers to torture employed under the Empire to ascertain the profits of employments: See *Decline and Fall*, ch. 17. Its employment upon the Jews in England is a familiar fact in history.

wholly inadequate indication of the annual private revenue of the country. In the United States, also, such a tax is unequal, because those holding lands for the rise in value escape it altogether — at least until they sell, though their actual increase in wealth may be great and certain.

*Taxes on Employments.*¹ A tax on the privilege of carrying on a business or employment will commonly be imposed in the form of an excise tax on the license to pursue the employment; and this may be a specific sum, or a sum whose amount is regulated by the business done or income or profits earned. Sometimes small license fees are required, mainly for the expense of regulation; but in other cases substantial taxes are demanded, because the persons upon whom they are laid would otherwise escape taxation in the main, if not entirely. Instances of hawkers, peddlers, auctioneers, etc., will readily occur to the mind. The form of a license, though not a necessary, is a convenient, form for such a tax to assume, because it then becomes a condition to entering upon the business or employment and is collected without difficulty. But it is equally competent to impose and collect the tax by the usual methods.²

Taxes on the Carriage of Property. There are various methods of imposing these; as by licensing the business, by taxing the vehicles employed, by tonnage duties, etc. As to tonnage duties, the powers of the states are restricted, as is elsewhere shown.

¹ If the constitution does not forbid, offices, posts of profit, occupations and trades may be taxed. When so taxed these are properly treated as taxable property by the commissioners in deciding whether they are creating an indebtedness beyond a certain per centum of the assessed valuation: *Brown's Appeal*, 111 Pa. St. 72.

² The money required from attorneys and barristers at law, vendue masters, tavern keepers and retailers is not a proportional tax, nor is it an excise or duty upon produce, goods, wares or merchandise. It is

a commodity, convenience or privilege, which the legislature has, by contemporaneous construction of the constitution, assumed a right to sell at a reasonable price; and by parity of reason it may impose the same condition upon every other employment or handicraft: *Bank v. Athorp*, 12 Mass. 252. A city tax upon lawyers is not open to the objection that it goes to nullify a license held from the state to practice law: *McCaskell v. State*, 53 Ala. 511; *Ould v. Richmond*, 23 Grat. 464; *Elliott v. Louisville*, 101 Ky. 262. See further, *post*, ch. XVIII.

Taxes on the Wages of Labor. These, in a country where wages are only sufficient to supply the absolute needs of life, would necessarily fall on the employer; but when the accumulations of labor are relied upon for a competency, and even for wealth, the burden might be more felt by the laborer. In modern times such taxes have been unusual.

Taxes on Servants, Horses, Dogs, Carriages, etc. These are intended as taxes on luxury and ostentation, and can seldom prove burdensome. Each person assesses himself in determining how many he will employ or own.¹ The same may be said of taxes on plate and articles of display, when taxed directly.

Taxes on the Interest of Money. These are objectionable for the same reasons that apply to income taxes. They lead to the same evasions, and to some others which it is impossible to check or circumvent. They are seldom levied *eo nomine*.

Taxes on Dividends are more easily collected and do not usually involve inquisitorial proceedings. Dividends come from corporations whose proceedings are usually semi-public, and while the privacy of individuals is not invaded, neither are the demands of the government liable to serious evasions. This is a common method of raising revenue.

*Taxes on Legacies and Inheritances.*² These are laid in diminution of a new capital which now comes to the hands of parties on the death of former owners; and in theory they should not be burdensome. In fact, however, except when they are

¹ Whether the employees of a railroad company are "servants" within a revenue law, see Attorney-General v. Railway Co., 2 H. & C. 792.

² Such taxes are of great antiquity, having been imposed in the days of the Emperor Augustus, and by the nations of Europe in the Middle Ages as well as in modern times: Eyre v. Jacob, 14 Grat. 422. See also Williams' Case, 3 Bland Ch. 186, 250. Pennsylvania adopted an inheritance tax law as early as 1826. Similar statutes were enacted in Maryland and Virginia in 1844, in North Caro-

lina in 1846, in Delaware in 1869, and, more recently, in many other states: Magoun v. Illinois Trust, etc. Bank, 170 U. S. 283. See Ferry v. Campbell, 110 Iowa 290. A succession tax is not a direct tax upon the land taken by descent, but is a tax imposed upon the devolution of the estate or the right to become beneficially interested thereto or to the income thereof. Scholey v. Rew, 23 Wall. 331. It is not a tax upon property, but upon the right or privilege of disposing of it, or upon the right or privilege of succeeding to it either

upon gifts by will to others than the immediate family, or are on collateral inheritances, they are likely to be felt severely. The property held by the head of the family is usually, for all purposes of supplying comforts and enjoyments, the property

under a will or in case of intestacy: *Mager v. Grima*, 8 How. 490; *Carpenter v. Commonwealth*, 17 How. 463; *Frederickson v. State*, 23 How. 445; *United States v. Perkins*, 163 U. S. 625; *Knowlton v. Moore*, 178 U. S. 41; *Wallace v. Myers*, 38 Fed. Rep. 184; *Wilmerding's Estate*, 117 Cal. 281; *Kochersperger v. Drake*, 167 Ill. 122; *Tyson v. State*, 28 Md. 577; *State v. Dalrymple*, 70 Md. 298; *Minot v. Winthrop*, 162 Mass. 113; *Callahan v. Woodbridge*, 171 Mass. 595; *Greves v. Shaw*, 173 Mass. 375; *Moody v. Shaw*, 173 Mass. 375; *Frothingham v. Shaw*, 175 Mass. 59; *Union Trust Co. v. Wayne Probate Judge (Mich.)*, 84 N. W. Rep. 1101; *In re McPherson*, 104 N. Y. 306; *In re Swift's Estate*, 137 N. Y. 77; *In re Knoedler's Estate*, 140 N. Y. 377; *In re Merriam's Estate*, 141 N. Y. 479; *In re Hoffman's Estate*, 143 N. Y. 327; *In re Davis's Estate*, 149 N. Y. 539; *In re Sherman's Estate*, 153 N. Y. 1; *In re Harbeck*, 161 N. Y. 211; *State v. Ferris*, 53 Ohio St. 314; *Hagerty v. State*, 55 Ohio St. 612; *Stroda v. Commonwealth*, 52 Pa. St. 181; *In re Orcutt's Appeal*, 97 Pa. St. 179; *In re Finnen's Estate*, 196 Pa. St. 72; *State v. Alston*, 94 Tenn. 674; *Eyre v. Jacob*, 14 Grat. 422; *Peters v. Lynchburg*, 76 Va. 929; *Schoolfield v. Lynchburg*, 78 Va. 366. See *Curry v. Spencer*, 61 N. H. 624; *State v. Mann*, 76 Wis. 469. Such a tax is in the nature of an excise: *Knowlton v. Moore*, 178 U. S. 41; *Wilmerding's Estate*, 117 Cal. 281; *State v. Hamlin*, 86 Me. 495; *Minot v. Winthrop*, 162 Mass. 113. It is imposed as a burden on each person claiming succession, measured by the value of his interest, and collectible out of his interest only: *In re Hoffman's Estate*, 143 N. Y. 327; *In re Westurn's Estate*, 152 N. Y. 93. It is not a general but a special tax, reaching only to special cases, and affecting only a special class of persons. There must be a clear warrant in law for imposing it: *In re Enston*, 113 N. Y. 181. It is not necessary that the property assessed under the collateral inheritance law should also be assessable under the general law, since the two statutes are not *in pari materia*: *In re Knoedler's Estate*, 140 N. Y. 377. "There is no difference in principle between property passing by a deed intended to take effect in possession or enjoyment on the death of the grantor, and property passed by will. In either case it is after the death of the grantor or testator, and of succeeding to it, which is taxed, though the amount of the tax is determined by the value of the property:" *Crocker v. Shaw*, 174 Mass. 266. On the ground that they are not taxes on property, inheritance taxes have generally been held valid although objected to as opposed to the requirement that taxation of property should be uniform: *Eyre v. Jacob*, 14 Grat. 422; *In re House Bill No. 122*, 23 Colo. 492; *Tyson v. State*, 28 Md. 577; *Kochersperger v. Drake*, 167 Ill. 122; *Union Trust Co. v. Wayne Probate Judge (Mich.)*, 84 N. W. Rep. 1101; *State v. Henderson (Mo.)*, 60 S. W. Rep. 1093; *Gelsthorpe v. Funnell*, 20 Mont. 299; *Magoun v. Illinois Trust, etc. Bank*, 170 U. S. 283. *Contra*, *Curry v. Spencer*, 61 N. H. 624; *Drew v. Tift*, 79 Minn. 175. See *Chambe v. Wayne Probate Judge*, 100 Mich. 112; *United States v. Perkins*, 163 U. S. 625. Congress has

of all the family; and a tax upon their succession to it on his death comes in a time of unusual necessary disbursements to increase the embarrassments and burdens which accompany the loss of their main reliance and support. Sometimes these taxes are levied on testamentary gifts and collateral successions only. Laws imposing inheritance taxes are "based," we are told in a recent case, "upon two principles: 1. An inheritance tax is not one upon the property but on the succession. 2. The right to take property by devise or descent is the creature of the law, and not a natural right — a privilege, and therefore the authority which confers it may impose conditions upon it." But where a statute expressly subjects to a tax the property of decedents' estates, it has been held to be a tax law, and not in the nature of an intestate law or of an act regulating the disposition of property by will.¹ And where the tax was levied not upon the separate legacy or share of each recipient, but upon the appraised value of the entire estate, it was considered to be not a succession or inheritance tax, but a tax upon property.²

Taxes on Sales, Bills of Exchange, Gold and Silver Bullion, etc. These when laid on the instruments by means of which business is transacted, and imposed in the form of stamp duties, have the high recommendation that the cost of collection is but a small percentage of the sum realized, and few evasions of payment are practicable. They are besides paid in small sums, as business transactions take place from time to time, and are therefore not much felt. Indeed, on many accounts they are the least objectionable taxes that can be levied; and the repeal of the most of those which were levied by federal authority in this country is probably due to the strong interest in favor of taxation calculated to aid particular branches of

authority to tax the transmission or receipt of property upon death: *Knowlton v. Moore*, 178 U. S. 41.

¹ *In re Cope's Estate*, 191 Pa. St. 1.

² *State v. Switzler*, 143 Mo. 287. Generally speaking, however, inheritance tax laws do not attach to the very articles of property of which the deceased died possessed; and the tax is usually imposed only on what remains after expenses of adminis-

tration, debts, and rightful claims are paid or provided for: *In re Orutt's Appeal*, 97 Pa. St. 179. The collateral inheritance tax imposed by the Pennsylvania statute of 1887 is said to be a tax upon property passing from the decedent, and not a mere succession duty imposed on the recipient: *Bittinger's Estate*, 129 Pa. St. 338; *Handley's Estate*, 181 Pa. St. 339.

trade. Notes issued with the intent that they shall circulate as currency are also sometimes taxed, with or without stamps.¹

Taxes on Newspapers. These would be likely to be imposed in the form of stamp taxes. The objections are very obvious, and were thought to be conclusive in this country even when the need of revenue was the greatest.²

Taxes on Legal Process. These are usually imposed with a view to adjusting, on an equitable basis, as between suitors and the public, the expenses of the administration of justice. They may be imposed as stamp fees on process, fees for permission to enter a suit, etc.³

¹ As to what is taxable as "circulation" under the federal revenue laws, see *U. S. v. Wilson*, 106 U. S. 620; *In re Aldrich*, 16 Fed. Rep. 369.

² The constitutional liberty of the press is not infringed by a license tax upon the business of publishing a newspaper: *Norfolk Land mark Pub. Co. v. Norfolk*, 95 Va. 564; *In re Juger*, 29 S. C. 438.

³ In certain states there are express constitutional provisions for such taxation. That they may be laid without such express authority, see *Harrison v. Willis*, 7 Heisk. 35; *State v. Howran*, 8 Heisk. 824. The right is easier defended than the policy, as the tax, if heavy, may in some cases be equivalent to a denial of justice. In *Harrison v. Willis*, *supra*, the validity of a tax on the unsuccessful party to a lawsuit was sustained. In Arkansas it is held that the fees required by law upon the issue of a writ or the recording of an instrument are strictly fees to the public and not taxes within the meaning of the clause in the constitution requiring all property to be taxed by valuation: *Lee County v. Abrahams*, 34 Ark. 166. A charge of \$3 to be included in the judgment on any criminal conviction does not violate that clause: *Murphy v. State*, 38 Ark. 514. That entry fees and continuance fees in

suits do not violate a constitutional provision that every person "ought to obtain right and justice freely and without purchase, completely and without denial, promptly and without delay," see *Perce v. Hallett*, 13 R. I. 363. Neither are they by implication prohibited by the constitution providing in terms that taxes may be levied on certain specified callings and kinds of business, and not expressly sanctioning the taxation of lawsuits: *State v. Lancaster Co.*, 4 Neb. 537. See *Hewlett v. Nutt*, 79 N. C. 263. The exaction, as a condition precedent to probate proceedings for the settlement of estates, of the payment to the county treasurer of specified sums arbitrarily prescribed with reference to the value of the particular estate, is a tax, and is invalid because contravening the constitutional right to the dispensation of justice freely and without purchase: *State v. Gorman*, 40 Minn. 232. A statute requiring payment of taxes as a condition precedent to making defense to a void claim of title under a tax sale was held void as refusing a remedy by due course of law for an injury to one's right of property: *Eustis v. Henrietta*, 90 Tex. 468, 91 Tex. 325. See *Bennett v. Davis*, 90 Me. 102.

Taxes on Consumable Luxuries. Articles like spirituous and malt liquors, tobacco, etc., are generally subjected to heavy taxation as constituting mere luxuries, so that however severe may be the tax, it will never, of necessity, prove burdensome to the needy classes. The taxes are laid in various forms: on the importation, the manufacture, and the sale. In the United States the inclination of late has been to make the tax on spirituous liquors as heavy as can be collected; but experience demonstrates that a point may be reached where any accession to the tax, by increasing the temptations to fraud and evasion, will tend to lessen the amount collected. Indeed the same may be said of all taxes; the higher they are the more numerous will be the frauds, perjuries, betrayals of official trust, and evasions of public duty; and when they reach a point where the chances of profit by clandestine manufacture or importation are in excess of the chances of loss by detection, added to the tax, the revenue will be certain to fall off very rapidly even though consumption is not diminished. It has recently been proved by the experience of the federal excise laws that a tax of fifty cents a gallon on spirits may be more productive than one of four times that amount. Great Britain at one time had a similar experience with taxes on tea.

Taxes on Exports. These, if the articles exported are a necessity to foreign countries, tend to transfer to such countries a part of the burden of supporting our own government. If not a necessity, they diminish exportation and production. In either case they will usually be impolitic; in the latter, almost certainly, and in the former by inviting retaliatory legislation by the countries affected. In this country the states cannot levy export duties without the consent of congress, except for the purposes of inspection,¹ nor can congress lay any tax or duty on articles exported from any state.²

Taxes on Imports. These have generally been the chief reliance of the federal government for its revenue. They have been laid on almost every conceivable article of use, taste or ornament, and upon almost every possible theory and principle. Some tariff laws have perhaps been framed with a view

¹ Const. U. S., art. I, sec. 10.

² Const. U. S., art. I, sec. 9.

to the just distribution of the burden, and for revenue purposes only; others, while having revenue mainly in view, have laid heavier duties on articles which would come into competition with home manufactures, while others, in some of their duties, have discarded the idea of revenue entirely, and looked solely to protection. We have thus had revenue tariffs, protective tariffs, and revenue tariffs with incidental protection. All have discriminated more or less against articles of mere luxury, but articles of prime necessity have, under some, been taxed very heavily, on the supposition that the burden imposed would be more than made up to those who shared it by the incidental advantages they would receive from the building up of manufactures at home. Whether the result has answered expectations is a question foreign to the purpose of the present work.

*Taxes on Corporate Franchises.*¹ These have been a source of large revenue in some states, while others have only placed corporations on the same footing with individuals, and taxed them on their property, or imposed some specific tax intended as an equivalent for a property tax. A tax on a corporate franchise may or may not be just or politic. If the business is one of which corporations have a monopoly, a tax on their franchises, however heavy, would not be burdensome, because the result would only be to add to the cost of whatever the corporations supplied to the public, so that the tax would really be paid by the community at large. If, on the other hand, the business is one open to free competition between corporations and individuals, and in respect to which corporations would enjoy no special privileges or advantages, a tax upon the privilege of conducting the business under a corporate organization would be wholly unreasonable and unjust,² because it would give individuals and partnerships an advantage in the competition; and their competition, keeping down prices, would prevent corporations from indirectly collecting any portion of

¹ The requirement that foreign corporations shall pay a license tax for the privilege of keeping offices within the limits of the state is not a tax upon corporate franchises: *Pembina, etc. Co. v. Pennsylvania*, 125 U. S. 181.

² *State v. Central Sav. Bank*, 67 Md. 290.

the tax from the public, and leave them to bear the whole burden of a demand which, under such circumstances, must prove ruinous. While, therefore, a tax on the corporate franchises of banks of issue, which are not subject to competition, might be entirely just, one on the corporate organization of a trading company, with which every individual might compete, would usually be wholly unjust, and, if continued, must result in the abandonment of a business which, under such circumstances, would be carried on at a ruinous disadvantage.

Taxes on the Value of Property. These have been the main reliance of the states. A common method of raising revenue has been to levy annual taxes on the value of all the real and personal property of the inhabitants, with limited exceptions, and irrespective of the income which, by means of the property, is or may be realized. This seems at first view to be just, and, in the belief that it is just, it has been steadfastly adhered to notwithstanding the many and very serious difficulties attending it. These difficulties pertain, for the most part, to the taxation of personal property, which is subject to the following very important objections:

1. It cannot be assessed without inquisitorial process of some kind, instituted for the purpose of ascertaining that which is not open to public inspection, and which the individual, except under the compulsion of such process, would not consent to disclose.¹ Few persons will voluntarily make a complete exhibit of their affairs to the public, and still fewer, perhaps, have their affairs in such shape that public officers can make an inventory of their personal possessions, including property in the hands of others or at a distance, and debts owing to them, without the assistance of the owners in preparing it. Statutes have

¹The reader will find valuable information on this score in the accounts which the current histories of England give of taxation in that country under the house of Plantagenet. A very interesting account of taxation under Edward I. is found in Audrey's National and Domestic History of England, Bk. 6, ch. 18. The assessment and valuation of articles

was so minute and particular as to give us no small insight into the domestic life of that day, and into the extent of the comforts and conveniences enjoyed by different classes of society. Lingard, in his History of England, Bk. 4, ch. 2, describes the methods of taxation under Edward III.

recognized this difficulty, and provided for a list to be presented by the taxpayer under oath, or allowed the assessor to tax every person according to his own judgment, leaving the person taxed to reduce the amount by his own oath, if he shall see fit, and be able to do so. This is objectionable, not only as taking away a desirable privacy in business and family concerns, but also as holding out a strong temptation to false swearing in matters where a false oath would be difficult if not impossible of detection.¹

2. The assessment of personalty holds out constant and very powerful temptations to defraud the state by concealing the knowledge of everything which the taxpayer believes cannot easily be discovered. This is so well understood that it is scarcely expected that citizens will voluntarily state what they possess, or that officers will make much if any effort to discover. Indeed, the assessment of personal property reaches so small a proportion of the amount really protected by government, that it might almost be said that laws for the purpose remain on the statute books rather as incentives to evasion and fraud in the dealings of the citizen with the state than as a means of realizing a revenue for public purposes.

3. Such taxes are usually unjust in their discrimination between residents and non-residents who enjoy the same protection of the laws. This will be manifest from an illustration: If money is loaned at ten per centum, and the tax upon credits is one per centum of the capital, the resident capitalist may count upon an income of nine per centum upon his investments. But the non-resident, who could not be taxed in the state upon his loans which are made there and protected and enforced by its laws, would, upon the like investment, count upon ten per centum; and this difference would not only be a serious dis-

¹ This difficulty has always existed. Latimer, in his sermon at Stamford, in the time of Henry VIII., inveighs against it in this language: "When the parliament, the high court of this realm, is gathered together, and there it is determined that every man shall pay a fifteenth part of his goods to the king, then commissioners come

forth, and he that in sight of men, in his cattle, corn, sheep and other goods, is worth an hundred marks or an hundred pound, will set himself at ten pound; he will be worth to the king but after ten pound. Tell me, now, whether this be theft or no?"

crimination against the citizen, but it would, and does, encourage further evasions and frauds, and particularly the loaning of moneys in the names of non-residents in order to escape taxation. It also presents an inducement to citizens, whose investments do not require personal attention, to take up their residence abroad; any saving of the tax being equivalent to an addition of that amount to their incomes.

4. Taxation of personalty leads to duplicate taxation in various ways. Other taxes besides those by valuation reach such property, being laid in the shape of duties, excise and license fees, etc.; and, moreover, when property is moved from one jurisdiction into another, when the time fixed for assessment is different, it may for that reason be twice assessed for a tax on valuation for the same period of time.¹

5. Such taxation requires a large addition to the force of revenue officers which otherwise would be sufficient, and it renders necessary more frequent assessments than would be requisite were taxation confined to that property, or those subjects, which are more permanent in characteristics and ownership. To make it just, it is generally thought necessary that the taxpayer's debts should be deducted; and this complicates the difficulty of ascertaining what his estate is, and leaves every man, in effect, to make his own assessment, or subjects him to the arbitrary and capricious action of the assessors.² These are objections which every one feels and appreciates; others, which are more obscure, need not be mentioned. A tax on land is not open to these objections. Whenever the law seeks to tax land and personalty with equality, the general result is, that land pays much the greater proportion of the tax, because this can all be reached, and all be taxed; no inquisitorial proceedings are required to discover it, and no frauds or evasions

¹ See *Kelley v. Rhoads*, 7 Wyo. 237; *State v. Deering*, 56 Minn. 24.

² Many statutes leave the assessors to estimate the personal estate, but allow the taxpayer to reduce an excessive valuation by a statement under oath. Under the almost universal custom of valuing property at from one-fourth to one-third its esti-

mated value, this privilege to the taxpayer becomes of no avail. A man having an estate of \$30,000 may be taxed upon that sum, and be without redress, because he cannot make oath that he is not worth so much, when if the general valuation is at one-third only, he should be taxed on but \$10,000.

can conceal it from view. These and other reasons have led some political economists to advocate the omission of personality from the customary taxation by value, and the raising of the ordinary state revenue by a tax laid exclusively on land and a few other subjects which, like land, are open to constant public observation and inspection, and in respect to which neither would harsh sifting processes be required, nor evasions be practicable, nor frauds invited. Such a tax, it is claimed, while nominally falling upon a few, would in fact be diffused through the whole community, and collected from all by being added to the price of what is produced and distributed by the classes taxed, just as we have found that a tax upon any common article of consumption is paid in the end by the consumer, and is no more burdensome to the dealer who nominally pays it than it is to any other member of the community of consumers. Adam Smith declared that "no tax can ever reduce for any considerable time the rate of profit in any particular trade, which must always keep its level with other trades in its neighborhood."¹ And, indeed, in this country, during and after the great civil war of 1861-5, it was generally found that a heavy tax upon any particular article of consumption gave the business that produced it a new and vigorous impulse of prosperity.²

Taxes on Amusements. These constitute a very considerable source of income to the cities and villages of the country, and sometimes to the state itself. When the amusements are of a public nature, like theatrical and other exhibitions and shows, concerts, games of skill or chance, publicly performed, whether for profit or otherwise, races, etc., they seem to be as proper subjects of taxation as property or ordinary business. In fact such a tax is in the nature of a tax on luxuries, and therefore as unobjectionable as a tax can well be. The limit to the right to tax amusements, if any exists, has never been judicially pointed out, but when the public are invited to share them the right must be clear. On the other hand, it would seem that strictly private and family amusements ought to be considered

¹ *Wealth of Nations*, Bk. V, ch. 11, this general subject with ability in p. 11, art. 4. many publications.

² Mr. David A. Wells has treated .

wholly exempt, except, possibly, when they involve such expense as to be beyond the enjoyment of the people generally, and for that reason to be properly taxable as luxuries.

The foregoing by no means embraces all the subjects of taxation; some others will be referred to as we proceed, but the enumeration here made may be sufficient for our present purposes. Even marriages have sometimes been taxed; though as a rule the fees imposed in the case of marriages have been only such as were supposed sufficient to cover the cost of proper regulations.

CHAPTER II.

THE NATURE OF THE POWER TO TAX.

In the creation of three distinct departments of the government, and the apportionment of power between them, the authority to tax necessarily falls to the legislative.¹ This is manifest from the slightest consideration of what taxation is. It is the making of rules and regulations under which the necessary revenues for all the needs of government are to be apportioned among the people and collected from them.² While the principles of the British constitution remained unsettled and in dispute, the authority to lay and collect taxes was claimed for the executive, but only as a branch of the supreme authority, which was his by divine right, to rule at discretion.³ When this arrogant claim was repudiated and abandoned, it became one of the most inflexible principles of government that the executive could levy no taxes whatsoever except in the execution of laws that had been made for his observance. Indeed, the principle goes farther than this. It is, that taxes are a *grant* of the people who are taxed, and the grant must be made by the immediate representatives of the people. All revenue laws in Great Britain must, therefore, originate with the popular house of parliament; a body very tenacious of its privileges.⁴ and disposed to class as revenue laws whatever will, even indirectly, bring revenue to the state.⁵ Following

¹ See the cases cited *ante*, page 7, note 6.

² "Taxation is a mode of raising revenue for public purposes:" *Sharpless v. Mayor*, 21 Pa. St. 147, 169; *People v. Salem T'p Board*, 20 Mich. 452, 474. And see *Allen v. Jay*, 60 Me. 124, 127; *Wasteney v. Schott*, 58 Ohio St. 410, 415; *Frost v. Flick*, 1 Dak. 129. "The term 'taxation' is ordinarily used to express the exercise of the sovereign power to raise a revenue for the general and ordinary expenses of the government:" *Em-*

ery v. San Francisco Gas Co., 28 Cal. 345, 357.

³ Speech of the Attorney-General in *Hampden's Case*; *Hallam's Const. Hist.*, ch. 7; 3 *State Trials*, 826; *Broom's Const. L.* 306, and notes.

⁴ *Inst.* 29; 1 *Bl. Com.* 169; *Vattel*, Bk. 1, ch. 20, § 241. The house of lords is not permitted to amend money bills, and the commons deny the power even to reject them: See resolutions of the 5th and 6th July, 1860.

⁵ While under the federal govern-

this precedent, the federal constitution requires all bills for raising revenue to originate in the house of representatives,¹

ment the term most usually applied to the laws by which taxes are laid and collected is *revenue laws*, in a number of the states that term is seldom made use of as applying to the laws of the state for the corresponding purpose. There is no substantial difference, however, in the meaning of the two terms, tax laws and revenue laws. In *Peyton v. Bliss*, 1 Woolw. 170, 173, Mr. Justice Miller says: "Any law which provides for the assessment and collection of a tax to defray the expenses of the government is a revenue law. Such legislation is commonly referred to under the general term 'revenue measures,' and those measures include all the laws by which the government provides means for meeting its expenditures. I can imagine no definition of a government revenue which would not include all the money raised by any form of taxation." But an act imposing a penalty which goes to the government is not for that reason merely a revenue law. Revenue laws are those laws only whose principal object is the raising of revenue, and not those under which revenue may incidentally arise: *The Nashville*, 4 Biss. 188. Money due the state for a "separate revenue license" to pursue an occupation is a tax laid for revenue: *Royall v. Virginia*, 116 U. S. 572.

¹The constitutional provision requiring bills for raising revenue to originate in the house does not apply to a bill establishing rates of postage, but relates to bills that draw money from the people without returning any direct equivalent: *United States v. James*, 13 Blatchf. 207. Under a provision of the constitution requiring all money bills to originate in the house of representatives, the senate has an equal right with the house

to institute an inquiry into the returns made from the towns, for the purpose of settling a valuation, and of concluding on the proportion of ratable property within each town: *Opinions of Justices*, 126 Mass. 547. Such a provision is limited to bills that transfer money from the people to the state, and does not include bills that appropriate money from the state treasury to particular uses of the government, or bestow it upon individuals or corporations: *Opinion of Justices*, 126 Mass. 557. A mere appropriation of money, though it may lead to the necessity of taxation, is insufficient to characterize a measure as one for revenue, such as must originate in the house of representatives and not in the senate: *Curryer v. Merrill*, 25 Minn. 1. A bill for reducing taxation, if it provides for collecting revenue, is still a bill for raising revenue, and must originate in the house of representatives: *Perry County v. Selma, etc. R. Co.*, 58 Ala. 546. A statute imposing a succession tax is an act for raising revenue, and is unconstitutional if it originated in the senate: *Succession of Sala*, 50 La. An. 1009; *Succession of Givanovich*, 50 La. An. 625. A statute authorizing a municipal corporation to impose for its own maintenance a license tax is not an act for raising revenue and need not have originated in the house: *Rankin v. Louisville (Ky.)*, 7 S. W. Rep. 174. And the act of congress providing a national currency secured by a pledge of United States bonds, which act, in the furtherance of that object, and to meet the expenses attending its execution, imposes a tax on the notes of the banks organized under it, is not a revenue bill which the constitution requires to originate in the house of representatives:

and there are corresponding provisions in the constitutions of many of the states.¹ While such provisions are of little or no importance in this country, where the members of both branches of the legislature are equally responsible to the people, the requirement that executive officers shall confine themselves strictly to executive duties is one of the most valuable principles of the government. Indeed, the division of the powers of government is the most important of the checks and balances by means of which the benefits of orderly government are secured and perpetuated; and the least encroachment by one department on the powers of the other is usurpation, for which the law is supposed to provide the adequate remedy. Executive and ministerial officers enforce the tax laws; but, in doing so, they must keep strictly within the authority those laws confer, and they cannot add to or vary, in the slightest degree, any tax lawfully levied.² They neither have, nor can have, any "roving commission to levy and collect taxes from the people without authority of law, but (they) can only do so in the manner prescribed by the law, which would be the governing rule for their conduct in levying taxes . . . in all cases."³ So inflexible is this rule, that even the legislature itself, as will be more fully shown hereafter, cannot clothe them with its own authority for this purpose.⁴ Where the people have located the power, there it must remain and be exercised.

Twin City Nat. Bank v. Nebecker, 167 U. S. 196.

¹The right of the popular branch of the government to originate and adopt measures for providing revenue for public purposes was asserted by the colonial assembly of New Jersey as early as 1748: See *Bernards T'p v. Allen*, 61 N. J. L. 228.

²*State v. Bentley*, 23 N. J. L. 532; *State v. Flavell*, 24 N. J. L. 370. A treasurer's assessment of property omitted from the roll for a former year is void if not expressly authorized by law: *Hamilton v. Amsden*, 88 Ind. 304. A note taken for the tax that should have been assessed, but was not, is void: *State v. Illyes*,

87 Ind. 405. No tax can be levied unless the statute clearly intends it: *Stanley v. Mining Co.*, 6 Colo. 415.

³*Barlow v. The Ordinary*, 47 Ga. 642; *State v. Bentley*, 23 N. J. L. 532. A city has no power to employ as collector any one but the officer upon whom the law imposes the duty: *Fort Wayne v. Lehr*, 88 Ind. 62. A county treasurer charged by the law with the duty of collecting county taxes cannot be empowered by the county board to employ counsel to assist him: *Miller v. Embree*, 88 Ind. 133.

⁴See the next chapter. An act authorizing the creation of a board of road commissioners, and empow-

The power not judicial. It is still more manifest that the power to tax is not judicial.¹ "It is the province of the judicial power to decide private disputes between or concerning persons, but of legislative power to regulate public concerns, and to make laws for the benefit and welfare of the state."² "The legislature makes, the executive executes, and the judiciary construes the laws."³ The legislature must therefore determine all questions of state necessity, discretion or policy involved in ordering a tax and in apportioning it;⁴ must make all the necessary rules and regulations which are to be observed

ering them, among other things, to levy taxes, was held unconstitutional: *Board of Com'rs v. Abbott*, 52 Kan. 148; *Parks v. Board of Com'rs*, 61 Fed. R. 436. The legislature cannot confer upon a state board a discretionary authority to add to the amount which the statute authorizes to be collected by state tax: *Houghton v. Austin*, 47 Cal. 646. The legislature must prescribe the rule of taxation, and cannot leave it to the local authorities: *State v. Hudson Av. Com'rs*, 37 N. J. L. 12. And in Tennessee it has no power to delegate the right to tax to any but municipal corporations: *Waterhouse v. Public Schools*, 8 Heisk. 857, 9 Bax. 400. A New Jersey statute providing for the adjustment, settlement and collection by commissioners of unpaid taxes, assessments, etc., was held not void as conferring on commissioners the legislative power of taxation: *In re Elizabeth Com'rs*, 49 N. J. L. 448.

¹ A statute attaching a railroad right of way to a county "for judicial purposes" does not confer on that county the right to tax it, as that is not a judicial power: *Board of Com'rs v. Northern Pac. R. Co.*, 10 Mont. 414.

² *Richardson*, Ch. J., in *Merrill v. Sherburne*, 1 N. H. 199, 204. A statute authorizing a city council to determine the regularity, validity and

correctness of an assessment, and providing for an appeal from its decision, is not unconstitutional as conferring judicial powers on the council: *Bellingham Bay Imp. Co. v. New Whatcom*, 20 Wash. 53.

³ *Marshall*, Ch. J., in *Wayman v. Southard*, 10 Wheat. 1, 46. See *Greenough v. Greenough*, 11 Pa. St. 489, 494; *Bates v. Kimball*, 2 Chip. 77; *Newland v. Marsh*, 19 Ill. 376, 382; *Beebe v. State*, 6 Ind. 501, 515; *Jones v. Perry*, 10 Yerg. 59, 69; *People v. Supervisors*, 16 N. Y. 424, 432; *Kimball v. Grantsville City*, 19 Utah 368; *State v. South Penn Oil Co.*, 42 W. Va. 80. A constitutional requirement that the powers of the several governmental departments shall be kept separate is not contravened by a statute authorizing a court to review on appeal from the board of public works an assessment for taxation: *Wheeling Bridge & T. R. Co. v. Paull*, 39 W. Va. 142. "To provide for the whole process of taxation is purely legislative; to construe the process, when enacted, is purely judicial." Therefore, a statutory provision declaring the effect of failure of assessors and other officers to comply in certain respects with the law, is void as an intrusion upon the judicial function: *Plumer v. Supervisors*, 46 Wis. 163.

⁴ *Thomas v. Gay*, 169 U. S. 264; *Boyd v. Wiggins*, 7 Okl. 85.

in order to produce the desired returns, and must decide upon the agencies by means of which collections shall be made.¹ "The judicial tribunals of the state have no concern with the policy of legislation. That is a matter resting altogether in the discretion of another co-ordinate branch of the government. The judicial power cannot legitimately question the policy or refuse to sanction the provisions of any law not inconsistent with the fundamental law of the state."² And it is as incompetent for the legislature to confer the power to tax upon the judiciary as upon the executive.³ If the legislature shall abuse

¹McHenry v. Downer, 116 Cal. 20. Although the constitution forbids one department of government from interfering with the powers of the others, there is no implied exemption from taxation in favor of lawyers arising from their being officers of the court and part of the judicial system: *Ex parte Williams*, 31 Tex. Crim. App. 262.

²Redfield, Ch. J., *In re Powers*, 25 Vt. 261, 265. See *Wheeler v. Platts-mouth*, 7 Neb. 270. Taxation is a legislative act. Being a legislative power it is not the province of a court to review it, except in cases where the power is limited by legislative restrictions: *Crafts v. Ray*, 22 R. I. — (46 Atl. Rep. 1043).

³*Hardenburg v. Kidd*, 10 Cal. 402. See *Bigler v. Sacramento*, 59 Cal. 698; *Meriwether v. Garrett*, 102 U. S. 472; *Ketchum v. Railroad Co.*, 4 Dill. 41; *Pennington v. Woolfolk*, 79 Ky. 13; *Muhlenburg County v. Morehead* (Ky.), 46 S. W. Rep. 484; *Norris v. Waco*, 57 Tex. 635; *Munday v. Rahway*, 43 N. J. L. 339. A statute requiring the circuit court, on the demand of bondholders, to levy a tax for the payment of their claims, is void, as imposing a legislative function on a judicial tribunal: *Fleming v. Trowsdale*, 29 C. C. A. 106. The laying of assessments not being a judicial act, a court cannot impose, as a condition to relief against a void tax, the payment of such a tax as

would be lawful, where new proceedings and a different basis of assessment are necessary to ascertain what tax is lawful: *Hutchinson v. Omaha*, 52 Neb. 345. The power to tax being legislative and not judicial, and the valuation of property for taxation being an incident to the taxing power, the supreme court cannot be constituted an appellate tribunal to review the valuations of railroad property made by the board of county clerks: *Auditor of State v. Atchison, etc. R. Co.*, 6 Kan. 500. "The court of sessions, under the constitution, can only exercise powers of a judicial character. The legislature is incompetent to confer upon the court any other powers. The assessment of taxes is not a judicial act; it partakes of no element of a judicial character. It is a legislative act; it requires the exercise of legislative power, which, for certain governmental purposes in the county may be devolved upon a board of supervisors, but cannot be delegated to any branch of the judicial department:" *Hardenburg v. Kidd*, 10 Cal. 402. In *Heine v. Levee Com'rs*, 19 Wall. 655, a bill in equity was filed to compel the respondent to levy a tax for the payment of overdue corporation bonds. The bill was dismissed. Miller, J., says: "The power we are here asked to exercise is the very delicate one of taxation. This power belongs in this country to the

its powers and transcend its legislative functions by the enactment of that which is called a tax, but which is not such in fact, then, indeed, the abuse may be arrested by the judicial arm;¹ but the interference does not proceed on the idea of any authority of the judiciary over the subject of taxation. The judi-

legislative sovereignty, state or national. In the case before us the national sovereignty has nothing to do with it. The power must be derived from the legislature of the state. So far as the present case is concerned, the state has delegated the power to the levee commissioners. If that body has ceased to exist, the remedy is in the legislature, either to assess the tax by special statute, or to vest the power in some other tribunal. It certainly is not vested, as in the exercise of an original jurisdiction, in any federal court. It is unreasonable to suppose that the legislature would ever select a federal court for that purpose. It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the federal government of the legislative functions of the state government. It is a most extraordinary request; and a compliance with it would involve consequences no less out of the way of judicial procedure, the end of which no wisdom can foresee." See, further, *State R. Tax Cases*, 92 U. S. 575; *United States v. New Orleans*, 2 Woods 230; *Clunie v. Siebe*, 112 Cal. 593; *Wells County v. McHenry*, 7 N. D. 246. Where the legislature, through a failure to levy, leaves property free from taxation, and provides no means for an assessment, the courts cannot remedy the omission: *State v. Mobile*, 73 Ala. 65; *Willis's Executor v. Commonwealth*, 97 Va. 667. See *Reeves v. Watertown*, 19 Wall. 107. Empowering the district court to revise and amend local assessments, or to order new ones, is not objectionable as giving authority independent of

local government, and as requiring the judiciary to exercise power belonging to another department: *State v. District Court*, 33 Minn. 235; *State v. Ensign*, 55 Minn. 278. The duty of collecting inheritance taxes being necessarily incidental to the settling of estates, it is no objection to the validity of the tax law that it imposes duties not judicial on the probate judge: *Union Trust Co. v. Wayne Probate Judge* (Mich.), 84 N. W. Rep. 1101. A New Jersey statute was construed as not conferring on a certain court power to tax or assess, but merely to apply existing valid laws to the case before it: *State v. Pater-son*, 49 N. J. L. 380.

¹ *Maltby v. Reading, etc. R. Co.*, 52 Pa. St. 140. See *Bank of Pennsylvania v. Commonwealth*, 19 Pa. St. 144; *Sharpless v. Mayor*, 21 Pa. St. 147; *New York & E. R. Co. v. Sabin*, 26 Pa. St. 242; *Gault's Appeal*, 33 Pa. St. 94; *Wharton v. School Directors*, 42 Pa. St. 358; *Weber v. Reinhard*, 73 Pa. St. 370; *Dé Pauw v. New Albany*, 22 Ind. 204; *Perkins v. Milford*, 59 Me. 315; *Waters v. State*, 1 Gill 302; *Alcorn v. Hamer*, 38 Miss. 652, 751; *Gibson v. Mason*, 5 Nev. 283; *People v. Brooklyn*, 4 N. Y. 419; *Brodnax v. Groom*, 64 N. C. 244; *Pullen v. County Com'rs*, 66 N. C. 361; *Boyd v. Wiggins*, 7 Okl. 85; *King v. Portland*, 2 Or. 154; *McCulloch v. State*, 4 Wheat. 316; *Providence Bank v. Billings*, 4 Pet. 514, 563; *Veazie Bank v. Fenno*, 8 Wall. 533; *Heine v. Levee Com'rs*, 19 Wall. 655. The court will interfere with the exercise of the power of taxation only when the constitution or some fixed rule is clearly violated: *Gay v. Thomas*, 5 Okl. 1; *Thomas v. Gay*,

ciary interposes on the application of any party whose rights are threatened by an unlawful exercise of authority; and it is immaterial with whom or what department the unlawful action originates, or by what name it is designated. But so long as the legislation in form and substance conforms to the constitution, and is not colorable merely, but is confined to the enactment of what is in its nature strictly a tax law, and so long as no constitutional limitations are exceeded, or the constitutional rights of the citizen violated in the directions prescribed for enforcing the tax, the legislation is of supreme authority, and the courts, as well as all others, must obey. Taxes may be, and often are, oppressive to the persons and corporations taxed; they may appear, to the judicial mind, unjust and even unnecessary but this can constitute no reason for judicial interference.¹

169 U. S. 264. Upon an application for a *mandamus* to compel the county court to levy a tax to pay county debts, it was said that "the courts have no more power to assess, or command the assessment of taxes, than the legislature has to adjudge or command the adjudication of law suits:" Justices of Cannon County v. Hoodenpyle, 7 Humph. 145, 147. And see Delaware R. Tax, 18 Wall. 206. A court may cut down an assessment if it exceeds the legal or constitutional limit, but if it does not, it cannot assume the functions of the assessors by reducing the assessable value, or by including omitted property which was taxable. Its functions are not to value or assess, but simply to decide whether the rate is in excess; at that point its functions cease. And it has no more power to equalize assessments than to make them: Ketcham v. Railroad Co., 4 Dill. 41. To the same effect is Kansas, etc. R. Co. v. Ellis County, 19 Kan. 584. If property which should not have been placed on the roll is assessed, the court cannot disregard it and let the assessment stand for the amount justly charge-

able against the owners; that would be equivalent to making a new roll and a new assessment, which would be beyond the province of the court: Spokane Falls v. Browne, 3 Wash. 84. The regular action of a board of supervisors in matters of taxation is not subject to any review in the courts: Bixler v. Sacramento County, 59 Cal. 698. By appealing from an assessment to a board which, not having judicial power, cannot pass on the validity of the tax, one is not precluded from resorting to the courts: County Com'rs v. Wilson, 15 Colo. 90.

¹See Veazie Bank v. Fenno, 8 Wall. 533; Weston v. Charleston, 2 Pet. 449; Delaware R. Tax, 18 Wall. 206; Davidson v. New Orleans, 96 U. S. 97; Meriwether v. Garrett, 102 U. S. 472; Pence v. Frankfort, 101 Ky. 534; Louisville & N. R. Co. v. Barboursville (Ky.), 48 S. W. Rep. 985; Williams v. Cammack, 27 Miss. 209; Dailey v. Swope, 47 Miss. 367; State v. Rainey, 74 Mo. 236; Bridge Proprietors v. State, 21 N. J. L. 384, 22 N. J. L. 593; Robertson v. State Land Office Com'r, 44 Mich. 274; State v. Beli, 1 Phil. (N. C.) 76; Kimball v. Grantsville City, 19 Utah 368.

Tax legislation may be colorable merely, either because the purpose for which the tax is demanded is not a public purpose, or because of the absence of some other essential element in taxation. When that is the case, the judiciary is the efficient check, and it must protect individuals and protect the public against what, in such a case, would be an attempt at lawless exactions.¹

In some of the states the county courts or county justices are empowered to make the county levies. But these, although exercising inferior judicial functions, are really administrative boards, possessing an authority corresponding to that which is exercised in other states by county commissioners or boards of supervisors.² Their action in ordering taxes is *quasi*-legislative, and governed by the same rules as other legislative action.

In some states, also, tax proceedings are reviewed and confirmed by the courts before any sales of property are ordered or demands conclusively fixed against individuals. But this again is not legislative. Such a review is supposed to be favorable to the taxpayer, as it gives him an opportunity to take the opinion of the court upon the legality of the demand made upon him, without waiting until the collector comes and seizes his person or his property. The proceeding is the institution of a suit on behalf of the state against each individual taxpayer or item of property taxed, and it calls upon the court to apply the law to the issues which such a suit presents. Of the judicial nature of such a review no question could well be raised.³

¹ *Tyson v. School Directors*, 51 Pa. St. 9; *Hammett v. Philadelphia*, 65 Pa. St. 146; *Turner v. Althaus*, 6 Neb. 54; *Tide Water Co. v. Coster*, 18 N. J. Eq. 518; *Weismer v. Douglas*, 64 N. Y. 91; *Covington v. Southgate*, 15 B. Monr. 491.

² The action of a county judge in assessing property under the Kentucky statute is ministerial, not judicial, so that the dismissal of an information filed by the auditor's agent is not a bar to a second one filed for the same purpose: *Baldwin v. Shine*, 84 Ky. 502. A county auditor in making additions to a per-

son's returns of his property for taxation acts ministerially, not as a judge, and his action is not reviewable by the courts on writ of error: *Musser v. Adair*, 55 Ohio St. 466. But when the county court has passed upon the legality of the listing of property for taxation, the orders of the circuit court on appeal are made in the exercise of its judicial power in the proper and ordinary sense: *State v. South Penn Oil Co.*, 42 W. Va. 80.

³ See *Davidson v. New Orleans*, 96 U. S. 97; *Boody v. Watson*, 64 N. H. 162.

Law of the land. There is a constitutional guaranty which has come to us from Magna Charta, which declares that no person shall be deprived of life, liberty or property, except by the judgment of his peers or the law of the land.¹ The alterna-

¹In the fifth amendment of the national constitution, and in the constitution of nearly all of the states, this safeguard is expressed thus: "No person shall . . . be deprived of life, liberty or property without due process of law." These words, it is said, "mean the law of the land; by which is to be understood laws which are general in their operation, and not special acts of legislation passed to affect the rights of particular individuals against their will, and in a way in which the same rights of other persons are not affected by existing laws:" *Sears v. Cottrell*, 5 Mich. 251. "By 'due process' is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode described by the law; it must be adapted to the end to be attained: and, whenever it is necessary for the protection of the parties it must give them the opportunity to be heard respecting the justice of the judgment sought:" *Hagar v. Reclamation Dist.*, 111 U. S. 701. "In determining what is due process of law, respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain or the power of assessment for local improvements, or none of these; and if found to be suitable or admissible in the special case, it will be judged to be due process of law; but if found to be arbitrary, oppressive or unjust, it may be declared to be not due process of law:" *Bradley, J.*, in *Davidson v. New Orleans*, 96 U. S. 97, 107. "Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one in question belongs:" *Chicago, B. & Q. R. Co. v. State*, 47 Neb. 549; *Cummings v. Hyatt*, 54 Neb. 35. In another tax case it is said that due process of law "implies a due course of legal proceedings according to those rules and forms which have been established for the protection of private rights:" *Caldwell v. Carthage*, 49 Ohio St. 334. The supreme court of Nebraska declares that the term "due process of law," as used in the constitution of that state, "relates primarily to the remedy or means of redress where property rights are invaded, rather than be substantive law:" *Board of Directors v. Collins*, 46 Neb. 411. For the meaning of "law of the land" or "due process of law" in matters of taxation, see further, *McMillen v. Anderson*, 95 U. S. 37; *Pearson v. Yewdall*, 95 U. S. 294; *Davidson v. New Orleans*, 96 U. S. 97; *Springer v. United States*, 102 U. S. 586; *Kelly v. Pittsburgh*, 104 U. S. 78; *Kentucky R. Tax Cases*, 115 U. S. 331; *Spencer v. Merchant*, 125 U. S. 345; *Walston v. Nevin*, 128 U. S. 578; *Palmer v. McMahon*, 133 U. S. 668; *Lent v. Tillson*, 140 U. S. 316; *Paulsen v. Portland*, 149 U. S. 30; *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112; *Bauman v. Ross*, 167 U. S. 548; *Parsons v. District of Columbia*, 170 U. S. 45; *Norwood v. Baker*, 172 U. S. 269; *French v. Barber Asphalt Paving Co.*, 181 U. S. —; *Wight v. Dav-*

tive provisions of this guaranty have sometimes been supposed to mean the same thing, and the guaranty itself to entitle every person to have any demand made upon him submitted to the determination of a jury of the vicinage. Such a construction applied in tax cases would work a thorough and radical change in the principles on which taxation is now supposed to rest. It would cripple the legislative power, and subject the action of the department whose function it is to make laws on its own views of the questions of public interest and public policy which the laws involve, to a review and possible reversal at the hands of a jury. It would not so much strengthen the judicial department as it would weaken the legislative; for the courts themselves, though juries sit with and as a part of them, are compelled to recognize a large degree of independence in the action of these assistants. Such independence is often useful, and never can be seriously detrimental when a verdict determines a single controversy only; but to make juries the assessors of the claims of the state upon individuals could only introduce anarchy; one jury reaching one conclusion regarding the public needs and the justice of its demands, and another another, until the state would be without general rule, and must fall to pieces from the incurable insufficiency of its government. Such a construction of a clause agreed upon as an important provision in a charter of government can never have been intended.¹

idson, 181 U. S. —; Cass Farm Co. v. Detroit, 181 U. S. —; Bagley v. Castile, 42 Ark. 77; Lent v. Tillson, 72 Cal. 404; Cleveland, C., C. & St. L. R. Co. v. Backus, 133 Ind. 513; Pittsburgh, C., C. & St. L. R. Co. v. Backus, 133 Ind. 629; Ferry v. Campbell, 110 Iowa 290; Pritchard v. Madren, 24 Kan. 486; Ulman v. Baltimore, 72 Md. 587; Bennett v. Davis, 90 Me. 102; Sears v. Cottrell, 5 Mich. 251; Weimer v. Bunbury, 30 Mich. 201; Bringard v. Stellwagen, 41 Mich. 54; Dingey v. Paxton, 60 Miss. 1038; Saxton Nat. Bank v. Carswell, 126 Mo. 436; State v. Central Pac. R. Co., 21 Nev. 260; Stuart v. Palmer, 74 N. Y. 183; McMahon v. Palmer, 102 N. Y. 176; Mauldin v. Greenville, 42 S. C. 293;

Nashville, M. & S. T. R. Co. v. White, 92 Tenn. 370; State v. Sponaugle, 45 W. Va. 415; Baldwin v. Ely, 66 Wis. 188; Meggett v. Eau Claire, 81 Wis. 326.

¹ Cruikshanks v. Charleston, 1 McCord 360; State v. Mayhew, 2 Gill 487; Harper v. Com'rs, 23 Ga. 566; State v. Frazier, 48 Ga. 137; Hagar v. Yolo Supervisors, 47 Cal. 223; Cowles v. Brittain, 2 Hawks 204; Com'rs v. Morrison, 22 Minn. 178; Cleveland, C., C. & St. L. R. Co. v. Backus, 133 Ind. 513; Pittsburgh, C., C. & St. L. R. Co. v. Backus, 133 Ind. 629; Davis v. Clinton, 55 Iowa 549; Howe v. Cambridge, 114 Mass. 388; Cocheco Co. v. Strafford, 51 N. H. 455; Boody v. Watson, 64 N. H. 162.

It has long been settled that while one is to be protected in his interests by the "law of the land," he has a right to "the judgment of his peers" only in those cases in which it has immemorially existed, or in which it has been expressly given by law. The clause recited from Magna Charta does not imply the necessity for judicial action in every case in which the property of the citizen may be taken for the public use. On the contrary, a legislative act for that purpose, when clearly within the limits of legislative authority, is of itself the law of the land.¹ And an act for levying taxes and providing the means of enforcement is, as we have seen, within the unquestioned and unquestionable power of the legislature.² It is therefore

In *Harris v. Wood*, 6 T. B. Monr. 641, it is remarked that taxes are recoverable not only without a jury, but without a judge, and the assessment of ministerial officers has been made to operate as an execution on the citizen, and the collector could distrain, and any public collector could be subjected to judgment on motion for the amount. "This process is not founded on a judgment; it issues without a judgment, and it is for this very reason that it is adopted. The state cannot wait the tedious process of getting a judgment. If she were compelled to do this, her honor might be compromised, and the rights of her citizens jeopardized. Hence she clothes her collecting agents with the power to issue process *at once* which will *at once* command her means:" Per Nisbat, J., in *Doe v. Deavors*, 11 Ga. 79, 86.

¹ *Spencer v. Merchant*, 125 U. S. 345; *Cleveland, C. C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Pittsburgh, C. C. & St. L. R. Co. v. Backus*, 133 Ind. 625.

² *Kelly v. Pittsburgh*, 104 U. S. 78; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Kimball v. Grantsville City*, 19 Utah 368. This subject was much considered in *Weimer v. Bunbury*, 30 Mich. 201, 212, where it was said: "There is nothing technical, or we

think obscure, in the requirement that process which divests property shall be due process of law. The constitution makes no attempt to define such process, but assumes that custom and law have already settled what it is. Even in judicial proceedings we do not ascertain from the constitution what is lawful process, but we test the action by principles which were before the constitution, and the benefit of which we assume that the constitution was intended to perpetuate. If there existed before that instrument was adopted, well-known administrative proceedings which, having their origin in a legislative conviction of their necessity, had been sanctioned by long and general acceptance, we are no more at liberty to infer an intent in the people to prohibit them by implication from any general language than we should be to infer an intent to abridge the judicial authority by the use of similar words. The truth is, the bills of rights in the American constitutions have not been drafted for the introduction of new law, but to secure old principles against abrogation or violation. They are conservatory instruments rather than reformatory; and they assume that the existing principles of the common law are ample for the

the law of the land not merely in so far as it lays down a general rule to be observed, but in all the proceedings and all the process which it points out or provides for in order to give the rule full operation. As has been well said, "the mode of levying as well as the right of imposing taxes is completely and exclusively within the legislative power, which, it is to be presumed, will always be exercised with an equal regard to the security of the public and individual rights and convenience. The existence of government depending on the prompt and regular collection of revenue must, as an object of primary importance, be insured in such a way as the wisdom of the legislature may prescribe. There is a tacit condition annexed to the ownership of property that it shall contribute to the public revenue in such mode and proportion as the legislative will shall direct; and if the officers intrusted with the execution of the laws transcend their powers to the injury of an individual, the common law entitles him to redress. But to pursue every delinquent liable to pay taxes through the forms of process and a jury trial would materially impede, if not wholly obstruct, the collection of the revenue."¹ There is no room for the supposition that in a matter of this public importance, where promptness in collection is always desirable, and often imperative, dilatory proceedings of this nature were within the contemplation of the people when consenting to any general provision of the constitution.² It is safer, and, as we believe,

protection of individual rights, when once incorporated in the fundamental law, and thus secured against violation. We are, therefore, of necessity driven from an examination of the previous condition of things, if we would understand the meaning of due process of law, as the constitution employs the term. Nothing previously in use, regarded as necessary in government and sanctioned by usage, can be looked upon as condemned by it. Administrative process of the customary sort is as much due process of law as judicial process. We should meet a great many and very serious embarrassments in government if this were otherwise."

¹ Taylor, Ch. J., in *Cowles v. Brittain*, 2 Hawks 204, 207; *Crockett, J.*, in *Hagar v. Yolo Supervisors*, 47 Cal. 222, 233. See *Reclamation Dist. v. Evans*, 61 Cal. 104. Due process of law does not necessarily require a judicial hearing in matters of taxation: *State v. Sponaugle*, 45 W. Va. 415.

² See *Springer v. United States*, 102 U. S. 586; *Cowles v. Brittain*, 2 Hawks 204; *State v. Allen*, 2 McCord 55; *Sears v. Cottrell*, 5 Mich. 251; *High v. Shoemaker*, 22 Cal. 363; *Harper v. Com'rs*, 23 Ga. 566; *Tift v. Griffin*, 5 Ga. 185; *Wells County v. McHenry*, 7 N. D. 246; *Adler v. Whitbeck*, 44 Ohio St. 539. And see

more correct, to say that our constitutions have been framed and agreed upon in view of an immemorial practice and rule of government, under which the whole subject has been intrusted to the legislative department; and they are to be understood and construed in the light of that practice wherever the people have not expressly undertaken to change it.

Since the adoption of the fourteenth amendment to the federal constitution this subject has acquired additional importance.¹ Whenever it is claimed that a revenue law of any state, either in intent or in administration, deprives an owner of his property without due process of law, a federal question may be raised upon which the decision of the supreme court of the United States will be authoritative and conclusive. That tribunal, in very recent cases, has said: "It was not the intention of the fourteenth amendment to subvert the systems of the states pertaining to general and special taxation; that amendment legitimately operates to extend to the citizens and residents of the states the same protection against arbitrary state legislation affecting life, liberty, and property, as is afforded by the fifth amendment against similar legislation by congress; and the federal courts ought not to interfere when what is complained of is the enforcement of the settled laws of the state, applicable to all persons in like circumstances and conditions, but only when there is some abuse of law, amounting to confiscation of property or deprivation of personal rights."² In order to bring taxation imposed by a state, or under its authority, within the scope of the provision of the fourteenth amendment which prohibits the deprivation of property with-

Robertson v. Land Com'r, 44 Mich. 274, for limitations upon this doctrine. The Michigan tax law allowing a writ of assistance to be granted to a tax-title purchaser is not invalid as depriving the original owner of the right to have the title to his land tried by a jury: Ball v. Ridge Copper Co., 118 Mich. 7; Youngs v. Peters, 118 Mich. 45.

¹The prohibition, in the fifth amendment to the national constitution, against deprivation of life, liberty, or property without due pro-

cess of law, operates on the general government alone, and was not intended to restrict the powers of the states: Barron v. Mayor, 7 Pet. 247; Kelly v. Pittsburgh, 104 U. S. 78; McElwaine v. Brush, 142 U. S. 158; Kimball v. Grantsville City, 19 Utah 368; Delinquent Poll Tax, 21 R. I. 582.

²Cass Farm Co. v. Detroit, 181 U. S. —; French v. Barber Asphalt Paving Co., 181 U. S. —; Tonawanda v. Lyon, 181 U. S. —; Detroit v. Parker, 181 U. S. —.

out due process of law, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necessary operation is really spoliation under the power to tax.¹ A state has the right to devise its own system of taxation free from federal interference.²

From this amendment the federal courts derive no general jurisdiction to prevent, or to relieve from, oppression under state laws, or to correct errors and mistakes of detail in state administration.³ The distinction between the essentials of due

¹ *Henderson Bridge Co. v. Henderson*, 173 U. S. 592. This case holds that bridge property within the limits of a city may be regarded as enjoying such benefits from the government of the city that, consistently with the federal constitution, it may be subjected to municipal taxes under any system established by the state for the assessment of property for taxation. Due process of law is not denied by subjecting to taxation for ordinary city purposes land that has not been laid off into lots, but is used for agricultural purposes only: *Kelly v. Pittsburgh*, 104 U. S. 78. See *Kimball v. Grantsville City*, 19 Utah 368. The action of assessing officers who included in the valuation of railroad property for assessment property which a state statute unconstitutionally sought to exempt was held not lacking in due process of law: *Huntington v. Worthen*, 120 U. S. 97.

² *Kelly v. Pittsburgh*, 104 U. S. 78.

³ *Davidson v. New Orleans*, 96 U. S. 97; *Kelly v. Pittsburgh*, 104 U. S. 78; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Spencer v. Merchant*, 125 U. S. 345; *Walston v. Nevin*, 128 U. S. 578; *Lent v. Tillson*, 104 U. S. 316; *Del Castillo v. McConnico*, 168 U. S. 674; *Robinson v. Wilmington*, 25 U. S. App. 144. An owner is not deprived of his property without due process of law by the enforced collection of taxes merely because they work hardship and produce inequality in

his particular case: *Kelly v. Pittsburgh*, 104 U. S. 78. See *Forsythe v. Hammond*, 68 Fed. Rep. 774; *Norris v. Waco*, 57 Tex. 635. Where a state statute gives the owners of lands included in an irrigation district a right to be heard on the question of inclusion, and hearing is given before the tribunal so provided in accordance with the statute, the decision of such tribunal in the absence of fraud or bad faith will be conclusive on the federal courts: *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112. Where the assessing board and the state court have acquired jurisdiction to act, errors in the mere administration of the statute do not justify the federal supreme court in holding that the state is depriving owners of their property without due process of law: *Lent v. Tillson*, 104 U. S. 316. An assessment of certain real estate in New Orleans for draining the swamps of that city having been resisted on the ground that the proceedings deprived the owner of his property without due process of law, it was held that not the corporate agency by which the work was done, or the excessive price allowed therefor by the statute, or the relative importance of the work to the value of the land assessed, or the fact that the assessment was made before the work was done, or the fact that the assessment was unequal as regards the benefits conferred, were matters in which

process of law under the fourteenth amendment, and matters which may or may not be essential under the terms of a state assessing or taxing law, is that due process of law must be found in the state statute and cannot be departed from without violating the constitution of the United States; while the other matters depend upon the law-making power of the state, and may be varied or changed as the legislative will of the state shall see fit to ordain.¹

The national supreme court has also held that the provision requiring due process of law is not disobeyed by a state law taxing the owner of personalty—even if such owner is not a citizen or resident of the state—where such personalty is, although not the place of the owner's domicile.² Also, that state laws providing for the taxation of the mortgagee's interest in land as real estate, regardless of the locality of the mortgagee's residence,³ and compelling a resident of the state to pay taxes on a debt owed by a non-resident and secured by a mortgage on lands in another state,⁴ are valid. Further, a state tax on the property of an express company within the state, the taxable value whereof is determined by the rule of proportion with reference to the whole capital stock of the company, is not a tax on property beyond the jurisdiction of the state,

the state authorities are controlled by the federal constitution: *Davidson v. New Orleans*, 96 U. S. 97.

¹ *Del Castillo v. McConnico*, 168 U. S. 674; *Lombard v. West Chicago Park Com'rs*, 181 U. S. —. Under a state statute requiring the name of the owner, if known, to be placed on the assessment roll, with a description of the property assessed, an assessment of land in the name of R. Castillo, instead of the owner's full name, Rafael Maria Del Castillo, cannot be regarded as violating the constitution where the statute gave both constructive and actual notice of the assessment, and ample opportunity to the owner to correct or resist the same: *Del Castillo v. McConnico*, 168 U. S. 674. Where a special assessment to pay for a particular improvement has been held to be illegal,

authority subsequently given to make a new special assessment to pay for the completed work does not violate the federal constitution: *Lombard v. West Chicago Park Com'rs*, 181 U. S. —.

² *Pullman Palace Car Co. v. Pennsylvania*, 141 U. S. 18. It does not deny due process of law for a state to provide that as against persons moving from one county to another in the state taxes may be collected by sending a tax bill to the sheriff of the county into which such persons have removed: *De Arman v. Williams*, 93 Mo. 158.

³ *Savings, etc. Soc. v. Multnomah County*, 169 U. S. 421. See *Common Council v. Board of Assessors*, 91 Mich. 78.

⁴ *Kirtland v. Hotchkiss*, 100 U. S. 491.

and so void as a taking of property without due process of law.¹ An allowance of a claim for personal-property taxes against a decedent's estate under state laws preferring claims for taxes to ordinary debts, making them a lien on personalty, providing for enforcing delinquent taxes, and affording appropriate notice and opportunity to contest, is not without due process of law, although the decedent was a non-resident of the state.² But a state statute authorizing assessments for local improvements, and making the owners of lots personally liable for such assessments, cannot be permitted to affect with such a liability non-residents who have not been served with process,³ although a personal judgment against a resident for an assessment does not raise the question of due process of law.⁴

Private corporations are "persons" within the due-process clause of the fourteenth amendment;⁵ and, therefore, a provision of the constitution of California subjecting to separate taxation as real estate, and to deduction from the taxable value of the land, all mortgages except those of railroads, was held, as applied in practice, to take the property of railroad companies without due process of law.⁶ The reserved power to alter, amend, or repeal, a statute which constitutes a contract with a corporation exempting the latter from ordinary taxes, in lieu whereof a gross receipt tax is to be paid, cannot be so exercised as to relieve the state from the effect of the constitutional provision against impairing the obligation of contracts, by a statute which attempts to preserve all the obligations of the corporation in favor of the state, and to take away from

¹ *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194, 166 U. S. 185; *State v. Jones*, 51 Ohio St. 492. See *Western Union Tel. Co. v. Norman*, 77 Fed. Rep. 13.

² *Bristol v. Washington County*, 177 U. S. 133. A statute requiring property in the hands of a non-resident ward situated outside of the state to be taxed in the county within the state where the guardian was appointed is not unconstitutional as taking property without due process of law; *Baldwin v. State*, 89 Md. 587.

³ *Dewey v. Des Moines*, 173 U. S. 193, explaining what was said in *Davidson v. New Orleans*, 96 U. S. 97, on the subject of personal judgments for assessments.

⁴ *Davidson v. New Orleans*, 96 U. S. 97.

⁵ *Charlotte, C. & A. R. Co. v. Gibbes*, 142 U. S. 386; *Railroad Tax Cases*, 13 Fed. Rep. 722; *Santa Clara County v. Southern Pacific R. Co.*, 18 Fed. Rep. 385; *Knoxville & O. R. Co. v. Harris*, 97 Tenn. 684.

⁶ *Santa Clara County v. Southern Pacific R. Co.*, 18 Fed. Rep. 385.

the corporation the consideration on the part of the state upon which the corporation's contract to pay a gross receipt tax rested;¹ such statute is a mere arbitrary exercise of power, and amounts to a deprivation of property without due process of law. But a statute authorizing such a change in a contract made by a city with a water company as modifies the city's right to tax the company has been sustained.²

Due process of law under the fourteenth amendment does not require judicial proceedings in enforcing a tax,³ although it is competent to provide for them;⁴ and, therefore, "as applied to the proceedings for the levy and collection of taxes it does not imply or require the right to such notice and hearing as are deemed essential to the validity of the proceedings and judgments of judicial tribunals."⁵ "And whether any notice to the party affected is necessary depends," to use the words of Mr. Justice Field, "upon the character of the tax and the manner in which the amount is determinable. There are many taxes of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business), and, generally, specific taxes on things, or persons, or occupations. In such cases the legislature, in authorizing the tax, fixes its amount, and that is the end of the matter. Yet there can be no question that the proceeding is due process of law, as there is no inquiring into the weight of evidence, or other element of a judicial nature, and nothing could be changed by hearing the taxpayer. No right of his

¹ *Duluth & I. R. Co. v. St. Louis County*, 179 U. S. 302.

² *New Orleans v. New Orleans Water Co.*, 142 U. S. 79.

³ *McMillen v. Anderson*, 95 U. S. 37; *Springer v. United States*, 102 U. S. 586; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Kentucky R. Tax Cases*, 115 U. S. 321; *Lent v. Tillson*, 140 U. S. 316; *King v. Mullins*, 171 U. S. 404.

⁴ *Davidson v. New Orleans*, 96 U. S. 97; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112. These cases hold that it is due process when the statute provides that the questions

involved in the laying of an assessment shall be submitted to a court of justice with notice to the parties concerned, and opportunity on their part to appear and make contest.

⁵ *McMillen v. Anderson*, 95 U. S. 37; *Kentucky R. Tax Cases*, 115 U. S. 321; *Lent v. Tillson*, 140 U. S. 316; *King v. Mullins*, 171 U. S. 404; *Lent v. Tillson*, 72 Cal. 404; *Newton v. Roper*, 150 Ind. 630. See *McMahon v. Palmer*, 102 N. Y. 176. Notice by statute is generally the only notice given, and that has been held sufficient: *Kentucky R. Tax Cases*, 115 U. S. 321.

is therefore invaded.”¹ Where a law imposes a tax or assessment upon property according to its value, notice of every step in the tax proceedings is not necessary; the owner is not deprived of property without due process of law if he has an opportunity to question the validity or the amount of such tax or assessment either before that amount is finally determined or in subsequent proceedings for its collection.² Personal no-

¹ *Hagar v. Reclamation Dist.*, 111 U. S. 701. The summary appropriation of a dog for non-payment of a tax, without notice to the owner, is not a taking of property without due process of law; there being no property in dogs, against the police power of the state: *Fox v. Mohawk & H. R. Humane Soc.*, 165 N. Y. 517. A state statute taxing inheritances not being a tax on property is not unconstitutional as taxing private property without due process of law in not providing for a personal notice and opportunity to resist the assessment: *Union Trust Co. v. Wayne Probate Judge* (Mich.), 84 N. W. Rep. 1101.

² *McMillen v. Anderson*, 95 U. S. 37; *Davidson v. New Orleans*, 96 U. S. 97; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Spencer v. Merchant*, 125 U. S. 345; *Palmer v. McMahon*, 133 U. S. 660; *Lent v. Tillson*, 140 U. S. 316; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526; *Pittsburgh, C., C. & St. L. R. Co. v. West Virginia*, 172 U. S. 32; *McLeod v. Receveur*, 18 C. C. A. 188; *Weyerhaeuser v. Minnesota*, 176 U. S. 550; *Oskamp v. Lewis*, 103 Fed. Rep. 906; *American Refrig. Transit Co. v. Thomas* (Colo.), 63 Pac. Rep. 410; *Gallup v. Schmidt*, 154 Ind. 196; *In re Taxes of Itasca County*, 68 Minn. 353; *Wells County v. McHenry*, 7 N. D. 246; *State v. Whittlesey*, 17 Wash. 447; *Baldwin v. Ely*, 66 Wis. 188. A state statute authorizing the governor of the state, when it has been made to appear to him

that there has been an undervaluation of property for taxation in previous years, to appoint a person to revalue and reassess such property, is not objectionable because it does not provide for a hearing before the governor; he does not act judicially, but merely starts the inquiry, upon which a reassessment may be based: *Weyerhaeuser v. Minnesota*, 176 U. S. 550; *State v. Weyerhaeuser*, 72 Minn. 519. An assessment for taxation or a collection of taxes does not fail of “due process” though made without a hearing, where a reasonable provision is made for a hearing afterwards, at which errors may be corrected or the taxes refunded: *Williams v. Albany County Sup’rs*, 122 U. S. 154. Where the laws of the state give a taxpayer an opportunity to object before the tax commissioners to the taxes assessed against him, and provide for a review by *certiorari* of the commissioners’ decision, a state statute which provides that on the tax receiver’s application to a court a delinquent taxpayer may be fined in an amount equal to the taxes assessed against him, does not deprive him of liberty without due process of law, though he has no opportunity to be heard on such application: *Palmer v. McMahon*, 133 U. S. 660. A non-resident owner of property assessed under a statute providing that the county auditor shall correct the tax duplicate by adding omitted property when discovered, but shall notify the owners of such property who are residents of the county,

notice is not an essential of due process in taxation;¹ for that notice is sufficient which is given by statute,² or by publica-

cannot complain that the statute is unconstitutional for failure to provide for notice to non-residents or to give them a day in court, where the assessment by the county auditor was not a final judgment, but could be challenged by the non-resident by injunction, and where an order was obtained against the non-resident to show cause why he did not pay the taxes, in response to which any defense he had was open to him: *Gallup v. Schmidt*, 154 Ind. 196. Assuming that a state cannot, without inquisition or proceeding of some kind, declare a forfeiture of lands for failure during a named period to list them for taxation, yet if, before the final sale of such lands, the owner is given an opportunity to pay the taxes and charges, and so relieve his land from forfeiture, he cannot complain that his property has been taken without due process of law: *King v. Mullins*, 171 U. S. 404. A private sale of land for delinquent taxes, without notice to the owner other than the notice of a previous public sale at which it had not been sold, does not conflict with the federal constitution: *Newton v. Roper*, 150 Ind. 630. A state statute requiring a commissioner to enter in the tax-books patented land within his district which has been omitted, and to assess the same according to the assessed value of contiguous lands, and charge taxes against the same with interest for each year during which it was omitted, does not deprive one of his property without due process of law, since a complete remedy is afforded by the statute authorizing a person erroneously assessed to apply for relief within two years after the delivery of the assessment books to the treasurer: *Douglas Co. v. Commonwealth*, 97 Va. 397.

¹ *Merchants' Bank v. Pennsylvania*, 167 U. S. 461; *Monticello Distilling Co. v. Mayor, etc.*, 90 Md. 416.

² *Kentucky R. Tax Cases*, 115 U. S. 321. It is sufficient if notice be given by a law designating a time and place for parties to contest the justice of the valuation: *Monticello Distilling Co. v. Mayor, etc.*, 90 Md. 416. Where a state statute taxing the shares of shareholders of national banks through the agency of the banks defines the time when the banks shall make their reports to the auditor-general and specifically directs him to hear any stockholder who may desire to be heard, the due process required in respect to the matter of notice in tax proceedings is provided for: *Merchants' Bank v. Pennsylvania*, 167 U. S. 461. A statute providing for the assessment for taxation of railroad property by a state board does not fail of due process in that it does not require personal notice before the assessments are made final, as the statute names the time and place of meeting by the board: *Kentucky R. Tax Cases*, 115 U. S. 321; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 625. A state statute providing for the assessment of railroad property by a particular board does not fail of due process of law in that it does not require the board to grant a hearing for the correction of errors, where, according to the construction of the act by the supreme court of the state, a right to such hearing is given: *Kentucky R. Tax Cases*, 115 U. S. 321; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421. See *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194. The require-

tion.¹ Where provision is not made for notice or hearing at some stage of the proceedings, due process is wanting.²

If the legislature, in taxing lands benefited by a highway or other public improvement, makes provision for notice,³ by publication⁴ or otherwise to each owner of land, and for hearing

ment of due process of law is not infringed by the action of a board of equalization in raising the value of all property in the particular district, or in raising the valuation of an individual's property without further notice than is afforded by the statute which fixes the time for the board's meeting: *State v. Armstrong*, 19 Utah 117; *Streight v. Durham* (Okla.), 61 Pac. Rep. 1096.

¹ *State R. Tax Cases*, 92 U. S. 575; *Davidson v. New Orleans*, 96 U. S. 97; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Kentucky R. Tax Cases*, 115 U. S. 321; *Lent v. Tillson*, 140 U. S. 316; *Paulsen v. Portland*, 149 U. S. 30; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112; *Del Castillo v. McConnico*, 168 U. S. 674; *Wright v. Davidson*, 181 U. S. —; *Wiley's Petition*, 89 Mich. 58; *Cole v. Shelp*, 98 Mich. 58; *Muirhead v. Sands*, 111 Mich. 487; *Ball v. Ridge Copper Co.*, 118 Mich. 7; *Youngs v. Peters*, 118 Mich. 45; *Minnesota v. Weyerhaeuser*, 68 Minn. 353, 72 Minn. 519; *State v. Pillsbury* (Minn.), 85 N. W. Rep. 175.

² *Railroad Tax Cases*, 13 Fed. R. 722. Notice and an opportunity to be heard are essential to the validity of every assessment; and due process of law is denied where a state providing for taxation authorizes no appeal from an *ex parte* assessment: *Monticello Distilling Co. v. Mayor, etc.*, 90 Md. 416. The requirement of due process of law is violated by a city charter which provides that property shall be assessed at a valuation irrespective of the value as as-

sessed for the purposes of state taxation, and which contains no provision by which the owner may have the value, as ascertained under said charter, reviewed and corrected: *Heth v. Radford*, 96 Va. 272. Since real property passing by will or inheritance vests immediately in the heir or devisee on the owner's death, an inheritance-tax law which authorizes the fixing of the appraisement for taxation without notice or opportunity to the heir or devisee to be heard is unconstitutional as depriving the devisee of his property without due process of law: *Ferry v. Campbell*, 110 Iowa 290.

³ The necessity of notice and of opportunity for hearing insisted upon: *Scott v. Toledo*, 36 Fed. Rep. 385; *Murdock v. Cincinnati*, 44 Fed. Rep. 726; *Whiteford v. Probate Judge*, 53 Mich. 130. City charter granting general power to construct and assess need not make express provision for notice of assessment; power is subject to requirement of notice: *Paulsen v. Portland*, 149 U. S. 30. City charter not unconstitutional for want of provision for notice; such provision may be made by ordinance: *Tripp v. Yankton*, 10 S. D. 516. Assessments for public improvements under a charter making no provision whereby persons assessed had an opportunity to appear and contest validity of such assessments did not constitute due process of law: *Norfolk v. Young*, 97 Va. 728. Assessments for sidewalks valid though made pursuant to charter not providing for notice other than annual entry in tax-rolls: *Hennesy v. Douglas County*, 99 Wis. 129.

⁴ See note 1, *supra*. Notice of

him at some stage of the proceedings,¹ upon the question what proportion of the tax shall be assessed upon his land,² his property is not taken without due process of law.³ The right to

publication given by viewers to estimate proportional share, of time and place of first meeting, held to bring proceedings within due process of law: *Paulsen v. Portland*, 149 U. S. 30. Notice by publication provided for by statute held not so short as to constitute lack of due process: *Bellingham Bay & B. C. R. Co. v. New Whatcom*, 172 U. S. 314; *New Whatcom v. Bellingham Bay & B. C. R. Co.*, 16 Wash. 131; *King v. Portland (Or.)*, 63 Pac. Rep. 2. Right to notice and hearing waived by petition for improvement and agreement to pay: *Murdock v. Cincinnati*, 44 Fed. Rep. 726.

¹ *Davidson v. New Orleans*, 96 U. S. 97; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112; *Bauman v. Ross*, 167 U. S. 548; *City Council v. Birdsong (Ala.)*, 28 S. Rep. 522; *Cribbs v. Benedict*, 64 Ark. 555; *Lower Kings River Reclamation Dist. v. McCullah*, 124 Cal. 175. A statute fixing the amount per foot of frontage and square foot of area which property adjoining a sewer shall be assessed for its construction does not deprive the assessed abutters of their property without due process of law, because it does not provide for notice and hearing before the assessment is levied: *English v. Mayor, etc.*, 2 Marvel (Del.) 63. Where a city's charter provides for constructing sewers and levying assessments therefor according to area, regardless of improvements, and that during the progress of the work all persons interested shall have an opportunity to object to the materials used, the manner in which the work is done, or any supposed violation of the contract, it is unnecessary to pro-

vide an opportunity to lot owners to be heard on the assessments after they are levied, the levy being a mere mathematical computation; and making such assessments a fixed charge against the lots without notice or opportunity of hearing does not constitute a lack of "due process of law:" *Gillette v. Denver*, 21 Fed. Rep. 822.

² Due process of law does not require notice or hearing as to the legislative determination of the assessment district, or as to the lands to be included therein, or as to the property to be considered as benefited by the proposed improvement, or as to the total cost of the work, or as to the total amount of the benefits, or, unless land is to be taken, as to the necessity of the work: *Spencer v. Merchant*, 125 U. S. 345; *Williams v. Eggleston*, 170 U. S. 304; *Parsons v. District of Columbia*, 170 U. S. 45; *Voigt v. Detroit*, 123 Mich. 547; *Roberts v. Smith*, 115 Mich. 5. Where the cost of a street improvement is to be assessed by frontage, failure to provide for a hearing as to benefits has been held not to be a denial of due process: *Detroit v. Parker*, 181 U. S. —. See *Cass Farm Co. v. Detroit*, 181 U. S. —; *Wright v. Davidson*, 181 U. S. —; *Lyon v. Tonawanda*, 181 U. S. —; *French v. Barber Asphalt Paving Co.*, 181 U. S. —.

³ *Davidson v. New Orleans*, 96 U. S. 97; *Spencer v. Merchant*, 125 U. S. 345; *Walston v. Nevin*, 128 U. S. 578; *Lent v. Tillson*, 140 U. S. 316; *Paulsen v. Portland*, 149 U. S. 30; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112; *Bauman v. Ross*, 167 U. S. 548; *Parsons v. District of Columbia*, 170 U. S. 45; *Wight v. Davidson*, 181 U. S.

be notified and to have an opportunity to be heard in tax proceedings is further considered in another chapter.¹

State legislation may authorize different modes of assessment for different properties provided the rule of assessment remains the same.² It is also competent to enact that the decision of a designated board shall be final without rehearing or review.³

—; *Cribbs v. Benedict*, 64 Ark. 555; *Roundenbush v. Mitchell*, 154 Ind. 616; *Wilson v. Salem*, 24 Or. 504; *King v. Portland (Or.)*, 63 Pac. Rep. 2; *Meggett v. Eau Claire*, 81 Wis. 326. Where assessments under a state law for the purpose of reclaiming overflowed and marshy lands can be enforced only by a suit in which may be pleaded any defense going either to validity or amount, there is no lack of due process of law: *Hagar v. Reclamation Dist.*, 111 U. S. 701. An adequate legal remedy and an opportunity to be heard in court were held to be furnished by the Illinois statute which provided, in case of non-payment of a special tax for the construction of a sidewalk, for proceedings according to the general revenue laws of the state: *Job v. Alton*, 189 Ill. 256. By instituting an action in a state court against an abutting owner for the collection of a special assessment, a city affords him the opportunity to present every objection to the validity of such assessment, and judgment in such action will constitute due process of law: *Murdock v. Cincinnati*, 44 Fed. Rep. 726.

¹ *Post*, ch. XII.

² *Kentucky R. Tax Cases*, 115 U. S. 321; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526; *Kelley v. Rhoads*, 7 Wyo. 237. The fact that the statutes of a state provide that the property of railroad companies shall be assessed for taxation by a state board, while other property is originally assessed by a county board from which an appeal

may be taken to the state board, is not a deprivation of due process of law: *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421. See *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12. Nor is due process infringed by state statutes providing for the assessment of back taxes of railroad property by commissioners not authorized to assess other property: *Yazoo & M. V. R. Co. v. Adams*, 77 Miss. 764. Nor are constitutional rights affected by the fact that state laws provide for assessment by the county auditor of the taxes for previous years in which the property was omitted from the roll by said auditor, while the assessment of current taxes is made by the county assessor on actual view, and is reviewed by a town board of review and a county board of equalization, the rule of assessment being the same: *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526. The mere fact that a statute provides a difference of procedure in respect to a certain class of property from that provided for another class, or from the general procedure in regard to taxation, will not avoid such statute: *Boyd v. Wiggins*, 7 Okl. 85. Nor is the rule of due process infringed by a statute which provides a new method for the collection of taxes that is applicable even as to taxes assessed and returned before the passage of the act; delinquent taxpayers being given a day in court to show the invalidity of the tax: *Auditor General v. Reynolds*, 83 Mich. 471.

³ *Kentucky R. Tax Cases*, 115 U. S. 321; *Pittsburgh, C., C. & St. L. R. Co.*

Since assessments for taxation do not constitute judicial judgments, such as can be set aside only after notice and an opportunity to be heard, a reassessment of grossly undervalued property so as to make such property bear the same burden it would have borne if the true assessment had been made in the first instance does not violate the constitutional requirement of due process of law.¹ It has been held that where the functions of an officer in making examination as to property withheld from the tax-list by a taxpayer are judicial in their nature, a statute allowing him a certain commission on taxes so added to the list affects him with such a pecuniary interest as renders proceedings conducted by him not due process of law.²

Nor is the provision relating to due process of law violated by a state statute requiring treasurers of corporations to deduct a specified state tax from the interest paid on the corporation's bonds, etc., and to turn the same into the state treasury,³ or by an enactment requiring the chief officer of each railroad company to make an annual return to the state auditor of the length of his road within the state, and providing for a board of equalization to receive the returns and equalize the valuations, and further providing for the collection of the taxes so assessed by suit against the officers incurred by a failure to pay the taxes levied, or for the recovery of the taxes themselves by action in the courts.⁴ Nor does a state statute imposing on express, telegraph, telephone, and sleeping-car companies a

v. Backus, 154 U. S. 421; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112; *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526; *St. Louis, I. M. & S. R. Co. v. Worthen*, 52 Ark. 529; *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 625; *Yazoo & M. V. R. Co. v. Adams*, 77 Miss. 764.

¹ *Weyerhaeuser v. Minnesota*, 176 U. S. 550, affirming *State v. Weyerhaeuser*, 72 Minn. 519.

² *Brinkerhoff v. Brumfield*, 94 Fed. Rep. 422.

³ *Bell's Gap R. Co. v. Commonwealth*, 134 U. S. 232; *Jennings v. Coal Ridge, etc. Co.*, 147 U. S. 147.

A statute compelling payment of taxes on stock belonging to non-residents was held not to deprive insurance companies of their property without due process of law: *State v. Travelers' Ins. Co.*, 70 Conn. 590; *State v. Travelers' Ins. Co. (Conn.)*, 47 Atl. Rep. 299. A statute requiring persons in possession of distilled spirits to pay taxes thereon, and giving them a lien for taxes so paid when they are not the owners, is reasonable and valid; it merely makes the custodians of liquor the agents of the state in paying the tax: *Monticello Distilling Co. v. Mayor, etc.*, 90 Md. 416.

⁴ *Cincinnati, N. O. & T. P. R. Co. v. Commonwealth*, 115 U. S. 321.

penalty of fifty per cent. for non-payment of taxes, violate the rule of due process.¹

It has also been held, in applying to state legislation this important constitutional restriction, that one who takes a mortgage while laws are in force making water-rents, like taxes and assessments, a charge on the land prior to all other incumbrances, takes subject to this condition whether the water was introduced on the mortgaged lot before or after the giving of the mortgage, and hence he has no ground of complaint that he has been deprived of his mortgage without due process of law.²

The requirement of due process of law is not infringed by a statutory provision that one seeking to have the collection of a tax enjoined shall give security when instituting the suit.³

Nor can it be said that the "due process" clause forbids the system established by a state's constitution and laws under which taxable lands are forfeited to the state for the owner's neglect to enter them for taxation, and, upon petition required to be filed in the proper court in behalf of the state, are sold, after actual or constructive service upon the owner, who may intervene and redeem.⁴ Nor is the legislature of a state pro-

¹ *Western Union Tel. Co. v. Indiana*, 165 U. S. 304.

² *Provident Inst. v. Jersey City*, 113 U. S. 506. The legislature has power to make a special assessment for an improvement a lien upon the property paramount to a prior mortgage: *Morey v. Duluth*, 75 Minn. 221. But a statute providing that a city assessment should be a first lien on the property affected, and that bonds issued therefor should be conclusive evidence of the validity of said lien, was held unconstitutional as depriving the owner of his property without due process of law: *Ramish v. Hartwell*, 126 Cal. 443.

³ *McMillen v. Anderson*, 95 U. S. 37. Nor by a statute requiring a tender of the taxes to be paid before suit can be brought to recover land from the holder of a tax-deed: *Coats v. Hill*, 41 Ark. 149. It has, however, been held that a statute requiring

payment of taxes as a condition precedent to making defense to a void claim of title under a tax sale, refuses remedy of due course of law for an injury to a right of property: *Eustis v. Henrietta*, 90 Tex. 468, 91 Tex. 325. And due process of law is denied by a statute requiring the owner of land sold for taxes to deposit with the clerk of the court the amount of all taxes, interest, and costs accrued up to that time before he can contest the validity of the tax or sale: *Bennett v. Davis*, 90 Me. 102.

⁴ *King v. Mullins*, 171 U. S. 404. Due process of law is not violated by state laws providing for the forfeiture of lands because of non-entry for taxation: *State v. Cheney*, 45 W. Va. 478; *State v. Swann*, 46 W. Va. 128. The constitutional prohibition is, however, contravened by a statute which provides that owners of unas-
sessed military lots shall forfeit all

hibited from imposing a reasonable limitation upon the period within which, after the time for redemption has expired, a purchaser at a tax sale can enforce his right to a conveyance or lease.¹

While it is competent for the legislature of a state to declare that a tax-deed shall be *prima facie* evidence of the regularity of the sale, and of all proceedings prior thereto, such a deed cannot be made conclusive evidence of the grantee's title to the land.² A state law providing that tax-deeds which have been on record two years should, in any action brought more than a specified length of time after the act took effect, be conclusive evidence that there was no irregularity in the assessment of the taxes, was held to be a statute of limitations, and, therefore, was not regarded as depriving the owner of his property without due process of law in defiance of the federal constitution.³

It has been declared by the supreme court of the United States that "unless regulations concerning the granting of licenses to sell are so utterly unreasonable and extravagant in

their rights to the state unless they establish their title within a designated time: *Scharf v. Tasker*, 73 Md. 378. See *Bagley v. Castile*, 42 Ark. 77. And by a statute undertaking to confer upon a court jurisdiction to proceed as against lands upon which the state has lost its lien for taxes, and upon which it has no color of right to enforce collection thereof: *Kipp v. Elwell*, 65 Minn. 525.

¹ *Wheeler v. Jackson*, 137 U. S. 245.

² *Marx v. Hanthorn*, 148 U. S. 172; *Taylor v. Deveaux*, 100 Mich. 581; *McKinnon v. Neston*, 104 Mich. 642; *Weeks v. Merkle*, 6 Okl. 714. See *Wilson v. Wood* (Okl.), 61 Pac. Rep. 1045; *Kelly v. Herrall*, 20 Fed. Rep. 364; *Bannon v. Burns*, 39 Fed. Rep. 892. And further, as to the effect that may be given to tax-deeds, see *post*, ch. XV. A state statute providing that no action for the recovery of lands sold for taxes shall be maintained unless it appears that the plaintiff or his predecessor in title

was seised or possessed of such lands within the two years prior thereto, cannot be so construed as to deprive an owner of his lands or the right to recover possession because they have been for two years in possession of a purchaser at a tax sale which appears on the face of the proceedings to be void: *Alexander v. Gordon*, 41 C. C. A. 238. The principle of due process of law is not infringed by a state statute which provides that where land purchased by the auditor for delinquent taxes is not redeemed by the owner within two years, any person may purchase it by complying with the statute, and may procure a deed which can only be defeated by proof that the taxes were not properly chargeable on the land or had been paid: *Virginia Coal Co. v. Thomas*, 97 Va. 527.

³ *Turner v. New York*, 168 U. S. 90; *Saranac Land, etc. Co. v. Comptroller*, 177 U. S. 318.

their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for federal interference.”¹ Therefore a city ordinance authorizing the issue, upon the payment of \$100, of licenses to sell cigarettes, and forbidding the sale of those articles without such license, was held not to violate the national constitution; the amount of the tax named for the license was considered to be within the power of the state, through the city, to fix; and it was regarded as competent for the ordinance to delegate to the mayor the entire subject of granting or revoking licenses.² The requirement of a license for a warehouse by a state statute regulating elevators and warehouses on railroad rights of way or lands used in connection with a railway at stations and sidings is not forbidden by the fourteenth amendment in case of a warehouse used exclusively for the storage of the owner's grain, where such warehouse is used for the purpose of buying grain from the public, and is a sort of public market, the warehouseman being a party in interest and acting as marketman, weighmaster, inspector, and grader of the grain.³

Concerning special assessments for local improvements, it has been declared by the highest court that “In the absence of any more specific restriction than the general prohibition against taking property without due process of law, the legislature of the state, having the power to fix the sum necessary to be levied for the expense of a public improvement, and to order it to be assessed, either, like other taxes, upon property generally, or upon the lands benefited by the improvement, is

¹ *Gundling v. Chicago*, 177 U. S. 183.

² *Gundling v. Chicago*, 177 U. S. 183. Due process of law is not violated by the requirement, in a state statute relating to the licensing of persons doing business in the state, of a deposit of \$500: *State v. Harrington*, 68 Vt. 622. Statute and ordinance providing for the licensing, under the term of “gift enterprises,” of the business of dealers in trading stamps, which are sold to merchants to be given by them to their customers with their purchases, and to be re-

deemed by the seller in “presents,” held not to take property without due process of law: *Humes v. Fort Smith*, 93 Fed. Rep. 857. A state statute requiring the operators of coal mines to pay fees for mine inspections therein provided was held not to take the property of such operators without due process of law: *Consolidated Coal Co. v. People*, 186 Ill. 134.

³ *Cargill Co. v. Minnesota*, 180 U. S. 452, affirming *State v. Cargill Co.*, 77 Minn. 223.

authorized to determine both the amount of the whole tax and the class of lands which will receive the benefit and therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both of these facts to the judgment of commissioners. . . . But the legislature has the power to determine, by the statute imposing the tax, what lands which might be benefited by the improvement are in fact benefited; and if it does so, its determination is conclusive upon the owners and the courts."¹ The principle is well settled that the legislature does not violate the requirement of due process of law in authorizing special assessments, in determining the taxing district wherein they are to be laid, or in directing them to be made in proportion to the frontage, area or market value of the adjoining property.² In a recent opinion which has given rise to much controversy, the supreme court of the United States declares that "the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to them is, to the extent of such excess, a taking of private property for public use without compensation."³ That was a case

¹ *Spencer v. Merchant*, 125 U. S. 345. See *Williams v. Eggleston*, 170 U. S. 304.

² *Mattingly v. Dist. of Columbia*, 97 U. S. 687; *Wurts v. Hoagland*, 114 U. S. 606; *Walston v. Nevin*, 128 U. S. 578; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112; *Parsons v. Dist. of Columbia*, 170 U. S. 45; *Webster v. Fargo*, 181 U. S. —; *Wright v. Davidson*, 181 U. S. —; *Heman v. Allen*, 156 Mo. 534. The statute may make each street or portion thereof a taxing district for the improvement thereof: *Hilliard v. Asheville*, 118 N. C. 845.

³ *Norwood v. Baker*, 172 U. S. 269. To the same effect, *Hutcheson v. Storrie*, 92 Tex. 685. A state statute directing street commissioners to determine annually the just and equitable sewer charges to be paid by estates in the city, and to take into consideration not only the benefits received by the estate, but also "such

other matters as they shall deem just and proper," was held invalid as authorizing a taking of property to pay charges not founded on a special benefit received: *Sears v. Board*, 173 Mass. 71. Due process of law is not followed by a statute which provides for assessing upon the adjacent owners according to frontage, the expense of constructing a sewer to an amount not exceeding a certain sum per lineal foot: *Dexter v. Boston*, 176 Mass. 247. A city charter authorizing an assessment, on every lot in the city in front of which water pipes are laid, of an annual tax of ten cents per lineal foot of the frontage of such lot, was held invalid as providing for the taking of private property under the guise of taxation without due process of law: *Ramsey County v. Lewis Co. (Minn.)*, 85 N. W. Rep. 207. See *State v. Pillsbury (Minn.)*, 85 N. W. Rep. 175.

where, under a village ordinance, the entire expense of opening a street through the land of a single owner was imposed upon him, irrespective of the question whether the property was benefited by such opening; and the decision therein was generally construed as laying down the doctrine that the imposition of assessments for local improvements per front foot, irrespective of the question of accruing benefits, is in violation of the fourteenth amendment to the federal constitution.¹ But the national supreme court has settled the point by holding that an assessment of the cost of paving upon abutting property in proportion to the frontage thereof, without any preliminary hearing as to benefits, is not a denial of due process of law when authorized by the legislative power.² Nor is the

¹See *Adams v. Shelbyville*, 154 Ind. 467. In *State v. District Court*, 80 Minn. 293, the supreme court of Minnesota held that it was not a fair construction of *Norwood v. Baker*, *supra*, to regard all special assessments made on the basis of frontage as in violation of the fourteenth amendment.

²*French v. Barber Asphalt Paving Co.*, 181 U. S. —; *Tonawanda v. Lyon*, 181 U. S. —; *Cass Farm Co. v. Detroit*, 181 U. S. —; *Detroit v. Parker*, 181 U. S. —. Prior to these decisions, it was held in Indiana that the statutes of that state relating to the improvement of streets were not unconstitutional, since, although adopting the front rule as a *prima facie* basis of assessment, they did not exclude an investigation as to the special benefits or prohibit an assessment on that basis: *Adams v. Shelbyville*, 154 Ind. 467; *Indianapolis v. Holt*, 155 Ind. 222; *Taylor v. Crawfordsville*, 155 Ind. 403. Assessments or special taxation by frontage, without special inquiry as to benefits, have been sustained in many states as not denying due process of law: *Job v. Alton*, 189 Ill. 256; *Cass Farm Co. v. Detroit* (Mich.), 83 N. W. Rep. 108; *State v. District Court*, 80 Minn. 293; *Rolph*

v. Fargo, 7 N. D. 140; *Conde v. Schenectady*, 164 N. Y. 258; *Tripp v. Yankton*, 10 S. D. 516. See *City Council v. Birdsong* (Ala.), 28 S. Rep. 522; *Hadley v. Dague*, 130 Cal. 207. In Massachusetts, a statute authorizing assessments for street sprinkling to be apportioned according to lot frontage has been sustained as applied to occupied estates in a large city: *Sears v. Board*, 173 Mass. 71. Under a city charter providing that if, in condemnation proceedings, the jury finds that any tracts or parcels of land within the benefit district are benefited ratably in proportion to the assessed value thereof, as shown by the books of the assessors, it may so assess the same, the fact that under such circumstances the assessment was by the front foot did not render it unconstitutional as taking private property without due process of law: *Kansas City v. Bacon*, 157 Mo. 450. A city charter enacting that the whole cost of a district sewer shall be assessed as a special tax against the lots of land in the district, according to their proportionate area, without regard to improvements, is not a deprivation of property without due process of law: *Heman v. Allen*, 156 Mo. 534.

requirement of due process of law contravened by a statute providing for the organization of irrigation districts, and for an assessment by value of the land benefited by the irrigation, instead of an assessment in proportion to actual benefits conferred by the improvement, to pay the cost of constructing the works.¹ And the fourteenth amendment is not violated by a state law providing for the drainage, and for the assessment of the costs thereof upon all lot-owners, of any tract of low or marshy land on proceedings instituted by five or more owners of lots within the tract, and not objected to by owners of the greater part of the tract, all being given an opportunity for a hearing.² Where an assessment for improving a street has, after part payment, been declared void for want of any provision for notice and hearing, and where the unpaid part has been canceled, the legislature may direct an assessment of the amount so canceled, to be apportioned upon the lands as to which the original assessment was not paid.³

Many points under the requirement that process which divests property by taxation shall be due process of law have been decided by the state courts without review by the supreme court of the United States. Some of these have been mentioned; and others are cited in the margin.⁴

¹ Fallbrook Irrig. Dist. v. Bradley, 164 U. S. 112.

² Wurts v. Hoagland, 114 U. S. 606. See Howe v. Cambridge, 114 Mass. 388.

³ Spencer v. Merchant, 125 U. S. 345. See Lombard v. West Side Park Com'rs, 181 U. S. —. It has been held that due process of law is violated by the selling of land to satisfy a void street assessment which the legislature has unconstitutionally attempted to validate; Brady v. King, 53 Cal. 44. See Harper v. Rowe, 53 Cal. 233; Dundee Mortgage Co. v. School Dist., 19 Fed. Rep. 359.

⁴ The constitutional requirement of due process of law is not infringed by a state law inflicting—"for the suppression of mob violence"—upon the county in which a person is injured or killed by a mob, a penalty

to be paid to such person or to his next of kin, and authorizing and requiring a tax levy therefor: Board of Com'rs v. Church, 62 Ohio St. 318. Nor by a state statute providing that a certain county shall pay a certain part of the salaries of the judges of the district court therein: Steiner v. Sullivan, 74 Minn. 498. Nor by state statutes creating a school district and authorizing the levy of a tax for school purposes by a board of trustees on petition of twenty taxpayers: Martin v. School Dist., 57 S. C. 125. Nor by the taxation of property for free public schools in accordance with the constitution and laws of the state: Werner v. Galveston, 72 Tex. 22. See Revell v. Annapolis, 81 Md. 1. Nor by a statute imposing a progressive inheritance tax: Union Trust Co. v. Wayne Probate Judge

Equal protection of the laws. Immediately following those words in the fourteenth amendment which restrain any state from proceeding without due process of law is the provision that no state "shall deny to any person within its jurisdiction the equal protection of the laws." This imposes a limitation upon all the powers of the state which can touch the individual or his property, including among them that of taxation.¹ As explained by the federal supreme court, this prohibition "was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products. It may tax real estate and personal

(Mich.). 84 N. W. Rep. 1101. Nor by a city ordinance requiring a street railroad company to pay an annual tax on each mile of its road, as a condition upon its right to construct and operate its line: *Chicago General R. Co. v. Chicago*, 176 Ill. 253. Nor by a statute requiring tax-listers to list at double the estimated value the property of one who refuses to return a sworn inventory: *Bartlett v. Wilson*, 59 Vt. 23. Nor by state statutes providing that the county trustee shall determine the amount of tax assessments and render judgment thereon, upon which execution may issue, and gauging his compensation by the amount of taxes so collected: *Grundy County v. Tennessee Coal, etc. Co.*, 94 Tenn. 295. Nor by a statute allowing an assessment of ten per cent. of the estimated cost of a drain to be added thereto for contingent expenses: *Auditor General v. Melze*, 124 Mich. —, 82 N. W. Rep. 886. Nor by a city charter authorizing the cost of gas and water connections when made by the city to be assessed against the owners of property bordering on a street which has been ordered paved, even though the gas and water-works are owned by

private corporations: *Gleason v. Waukesha County*, 103 Wis. 225. Nor by a statute authorizing county treasurers, where the amount of a delinquent tax is less than \$300, to sell the property on which the tax is a lien, simply by giving certain notices, instead of bringing suit as in cases where the tax is greater: *Sawyer v. Dooley*, 21 Nev. 390. Nor by a state statute which has the effect of hastening the time of sale of lands returned delinquent before its passage, and of lessening the time of redemption as to such lands: *Muirhead v. Sands*, 111 Mich. 487. Nor by statutory provisions permitting the selling of the whole of a tract of land for taxes when a smaller part might be sufficient to pay them: *Bigger v. Ryker* (Kan.), 63 Pac. Rep. 740. While the taxing power is great, it is not within legislative authority to direct the collection, as a tax, by *ex parte* and arbitrary proceedings of a sum that is in fact payable as rent of lands: *McFadden v. Longham*, 58 Tex. 579.

¹The Railroad Tax Cases, 13 Fed. Rep. 722; *Santa Clara County v. Southern Pacific R. Co.*, 18 Fed. Rep. 385.

property in a different manner. It may tax visible property only, and not tax securities for the payment of money. It may allow deductions for indebtedness, or not allow them. . . . We think we are safe in saying that the fourteenth amendment was not intended to compel the state to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the states whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice, and which every state, in one form or another, deems it expedient to adopt.”¹ Equal protection cannot be said to be denied by a statute which operates alike on all persons and property similarly situated,² or by one which authorizes different modes

¹ *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232, 237. See to the same effect, *Pacific Express Co. v. Seibert*, 142 U. S. 339; *Jennings v. Coal Ridge, etc. Co.*, 147 U. S. 147; *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194, 166 U. S. 185; *Merchants', etc. Nat. Bank v. Pennsylvania*, 167 U. S. 461; *Simpson v. Hopkins*, 82 Md. 478; *State v. Bixman (Mo.)*, 62 S. W. Rep. 828; *Kniseley v. Cotterel*, 196 Pa. St. 614. A tax law cannot be challenged under the federal constitution on the ground of inequality in the burdens resulting from its operation: *Merchants', etc. Nat. Bank v. Pennsylvania*, 167 U. S. 461. Nor because it exempts from taxation property used exclusively for charitable purposes: *Williamson v. New Jersey*, 130 U. S. 189.

² *Wurts v. Hoagland*, 114 U. S. 606; *Kentucky R. Tax Cases*, 115 U. S. 321; *Walston v. Nevin*, 128 U. S. 578; *Magoun v. Illinois Trust, etc. Bank*, 170 U. S. 283. Equal protection exempts any person from any greater burdens or charges than such as are equally

imposed upon all others under like circumstances, and forbids unequal exactions of any kind, among them unequal taxation: *The Railroad Tax Cases*, 13 Fed. Rep. 722; *Santa Clara County v. Southern Pac. R. Co.*, 18 Fed. Rep. 385. Taxation by a city of a bridge structure, to which the same rule is applied as is applied to all other property within the municipal limits, does not deny the equal protection of the laws: *Henderson Bridge Co. v. Henderson*, 173 U. S. 592. Nor is such denial worked by a statute imposing a collateral inheritance tax of five per cent. upon the value of property passing to any person not within certain degrees of consanguinity to the decedent: *Wallace v. Myers*, 38 Fed. Rep. 184. Nor by a statute providing for the drainage of marsh lands, which statute is applicable to all lands of the same kind: *Wurts v. Hoagland*, 114 U. S. 606. Nor does a statute allowing banks to collect from shareholders and pay into the state treasury an annual tax of a certain percentage

of assessment for different properties but retains the same rule of assessment,¹ or by proceedings for the assessment and collec-

of the par value of their shares, instead of the regular tax of half that percentage of the actual value, deny "equal protection," even though it results in some banks paying less than others on the actual value of their property: *Merchants', etc. Nat. Bank v. Pennsylvania*, 167 U. S. 461. A state constitutional provision that a deduction of debts from credits may be authorized in fixing the assessable value of property does not infringe the rule of equal protection: *Newport v. Mudgett*, 18 Wash. 271. Nor does that rule preclude the taxation of goods in the state where they are sold, though the merchant who owns them paid taxes on them in the state whence they were shipped: *Ex parte Thornton*, 12 Fed. Rep. 538.

¹ *Kentucky R. Tax Cases*, 115 U. S. 321; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526; *Weyerhaeuser v. Minnesota*, 176 U. S. 550. "The equal protection of the laws" does not in any case require an appeal from the assessment of taxes to be given, although an appeal may be allowed in respect to other persons differently situated: *Kentucky R. Tax Cases*, 115 U. S. 321. And such protection is not denied by the fact that only one hearing, viz., before a state board which assesses their property, is given to railroad companies, while the ordinary taxpayer, whose property is assessed by county officials, has, after hearing before them, a right of appeal to, and a hearing before the state board: *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*,

133 Ind. 625. See *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12; *Yazoo & M. V. R. Co. v. Adams*, 77 Miss. 764. Nor is such protection withheld by state laws which provide that taxes for years in which the property was omitted from the rolls shall be assessed in a mode different from that prescribed for current taxes, the rule of assessment being, however, the same: *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526. A corporation is not denied the equal protection of the laws by a state statute which, as construed by the highest court of the state, provides an opportunity, in assessing a corporation's property, to correct an undervaluation first made by the assessor, without giving the same opportunity to correct an undervaluation of the property of individuals, so long as the corporation is not assessed on any property not legally taxable, or taxed beyond the actual value of its property; there being, moreover, no proof of any general custom to undervalue the property of individuals: *New York v. Barker*, 179 U. S. 279; *People v. Barker*, 158 N. Y. 168. Railroad property including the land forming part thereof may, without depriving the companies of equal protection, be assessed annually, while ordinary real estate is assessed but once in two years or even less often; the fact that such property is denominated "real estate" not changing its true character: *St. Louis, I. M. & S. R. Co. v. Worthen*, 52 Ark. 529; *Chamberlain v. Walter*, 60 Fed. Rep. 788. See *Owensboro & N. R. Co. v. Daviess County (Ky.)*, 3 S. W. Rep. 164. On the same principle, the statutory mode of sale where the delinquent tax is less than a certain sum may

tion of taxes which follow the course customarily pursued in the state.¹

The inhibition of the amendment was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation,² but it does not prohibit special legislation,³ or legislation that is limited either in the objects to which it is directed, or by the territory within which it is to operate.⁴ Nor does it preclude the

be more summary than where the tax is greater: *Sawyer v. Dooley*, 21 Nev. 390.

¹ *Pembina, etc. Co. v. Pennsylvania*, 125 U. S. 181.

² *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112. Unjust and illegal discrimination between persons, in taxation, and the denial of equal justice, are within the prohibition of the constitution: *Cache County v. Jensen*, 21 Utah 207. An assessment of property which violates the provisions of a state constitution requiring uniformity in taxation, and which is a class discrimination, also deprives the owner of the equal protection of the laws guaranteed by the federal constitution, although the illegality is in the administration of the statute rather than in the statute itself: *Railroad & T. Cos. v. Board of Equalization*, 85 Fed. Rep. 302. Where, besides being in violation of the constitution of the state, the statute results in an arbitrary and oppressive discrimination in regard to a large class of citizens, or a large species of property, it is a denial of the equal protection of the laws: *Nashville, C. & St. L. R. Co. v. Taylor*, 86 Fed. Rep. 168. Such denial is effected by a state statute which, being applicable only to peddlers offering for sale goods manufactured within the state, imposes a discriminating tax on such goods in favor of foreign goods: *State v. Hoyt*, 71 Vt. 59. A statute imposing a license fee of \$25 a quarter on every laundry business employing or engaging more

than one person, except steam laundries, which are taxed but \$15 per quarter, was held void by the federal district court, as imposing a heavier burden upon one kind of laundry business than upon another: *In re Yot Sang*, 75 Fed. Rep. 983. *Contra*, *State v. French*, 17 Mont. 54. It has been held that a state law which discriminates in taxation for the public schools, and taxes only white persons for white schools, and negroes for schools for negro children, is void as repugnant to the fourteenth amendment: *Claybrook v. Owensboro*, 16 Fed. Rep. 297. *Contra*, *Marshall v. Donovan*, 10 Bush 681; *Norman v. Boaz*, 85 Ky. 557; *Eakins v. Eakins* (Ky.), 20 S. W. Rep. 285; *Board of Trustees v. Louisville & N. R. Co.* (Ky.), 30 S. W. Rep. 620. None but a person injured by an alleged unlawful discrimination can complain of it: *United States v. Jackson*, 3 Sawy. 59; *Norman v. Boaz*, 85 Ky. 557; *Eakins v. Eakins* (Ky.), 20 S. W. Rep. 285; *Kansas City v. Union Pac. R. Co.*, 59 Kan. 527.

³ *Home Ins. Co. v. New York*, 134 U. S. 594.

⁴ *Magoun v. Illinois Trust, etc. Bank*, 170 U. S. 283. State statutes creating a school district and authorizing the levy of a tax for school purposes by a board of twenty taxpayers, are not in violation of the federal constitution as denying the equal protection of the laws, since the legislature may, without violating such provision, delegate its taxing power for specific purposes to the

classification of property for taxation — subjecting one kind of property to one rate of taxation, and another to a different rate — distinguishing between franchises, licenses and privileges, and visible and tangible property, and between real and personal property.¹ The power of the state to distinguish, select and classify objects of taxation has a wide range of dis-

electors of a subdivision of the state: *Martin v. School Dist.*, 57 S. C. 125.

¹ *Home Ins. Co. v. New York*, 134 U. S. 594; *Magoun v. Illinois Trust, etc. Bank*, 170 U. S. 283; *Singer Manuf. Co. v. Wright*, 33 Fed. Rep. 121. Equal protection of the laws is not denied by a state statute which provides for annual reports by each railroad company's chief officer of the length of his road, and for a board of equalization to ascertain the value and adjust the assessment thereof, and which, in effect, classifies railroad property as a separate class for taxation: *Cincinnati, N. O. & T. P. R. Co. v. Commonwealth*, 115 U. S. 321. So, a state statute distributing for taxation the rolling stock and personal property of each railroad company among the several counties traversed by the road, and subjecting the same to the varying rates of taxation prevailing therein, instead of taxing the road in the county of its principal office as is done in the case of individuals and other corporations, is not a discrimination in violation of the fourteenth amendment: *Columbus S. R. Co. v. Wright*, 151 U. S. 470. The requirement of equal protection is not infringed by a statute providing that the entire expenses of a railroad commission shall be borne by the several corporations owning or operating railroads within the state: *Charlotte, C. & A. R. Co. v. Gibbes*, 142 U. S. 386. A state statute exacting from all corporations doing business in the state a tax proportioned to the total amount of their capital stock, without regard to what part thereof is employed within the state, or to the

amount or kind of business done there, is not obnoxious to the equal protection clause of the fourteenth amendment: *Horn Silver Mining Co. v. People*, 143 U. S. 305. The taxable value of the property of telegraph, telephone and express companies in a particular state may be determined with reference to the value of the entire capital stock: *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194, 166 U. S. 185. And the intangible property of an express company may be taxed upon the basis of its mileage within and without the state: *Adams Express Co. v. Kentucky*, 166 U. S. 171. It is allowable to put express, telegraph, telephone and sleeping-car companies into a class by themselves for taxation, and to provide that a judgment against such a company for unpaid taxes shall include a penalty of fifty per cent. of the amount of the tax: *Western Union Tel. Co. v. Indiana*, 165 U. S. 304. As the state has a right to tax different kinds of property in different ways, a statute which imposes on express companies a tax on their receipts for business done within the state does not deprive them of the equal protection of the laws: *Pacific Express Co. v. Seibert*, 142 U. S. 339. The legislative power to classify corporations for taxation sustains a statute imposing a tax of five mills on each dollar of the capital stock of one kind of corporations, and a tax of only three mills in the case of other corporations: *Commonwealth v. Sharon Coal Co.*, 164 Pa. St. 284. Nor is equal protection of the laws withheld by the Pennsylvania laws tax-

cretion. Classification must be reasonable, but there is no precise application of the rule of reasonableness, and there cannot be an exact exclusion or inclusion of persons and things.¹

ing bonds and other securities issued by corporations on their nominal instead of their face value: *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232; *Jennings v. Coal Ridge, etc. Coal Co.*, 147 U. S. 147. Nor by a statute which provides that every corporation, with certain exceptions, doing business in the state, shall be subject to a tax upon its corporate franchises or business, to a certain amount upon its capital for each per cent. of its dividends where they amount to six per cent. upon its capital, a less rate to be paid where the dividends are less than six per cent.: *Home Ins. Co. v. New York*, 134 U. S. 594. Nor by a state statute dividing the stockholders of insurance companies into two classes for taxation, subjecting one to municipal taxation and the other to state taxation, and fixing the amount to be paid by non-residents by rules which differ from those applicable to residents: *State v. Travelers' Ins. Co. (Conn.)*, 47 Atl. Rep. 299. A specific tax levied under a state statute upon persons engaged in a particular business does not deny to any person the equal protection of the laws, where all persons of a given class, designated and described by the special occupation in which they are engaged, are subject to the same tax, and the individual complaining falls within the class upon which such tax is imposed: *Singer Manuf. Co. v. Wright*, 97 Ga. 114. An ordinance imposing a tax for general revenue purposes, consisting of a license tax, does not deny the equal protection of the law though classifying wholesale dealers separately from retailers, and imposing a smaller tax on a wholesaler than on a retailer doing the same amount of business, and though the tax im-

posed on persons doing a small amount of business is proportionately larger than that imposed on persons doing larger amounts of business: *Commonwealth v. Clark*, 195 Pa. St. 634. A state statute providing for a license tax, and providing that the act shall not apply to persons engaged in the liquor business as wholesale dealers who do not sell in less quantities than five gallons at a time, does not discriminate in favor of wholesale and against retail dealers, so as to infringe the equal protection clause: *Daniels v. State*, 150 Ind. 348. A state statute requiring license taxes from persons owning or operating elevators or warehouses on railroad rights of way, or on land used in connection with a railway at stations and sidings, is not forbidden by the fourteenth amendment, being based on a proper classification: *Cargill Co. v. Minnesota*, 180 U. S. 452, affirming *State v. Cargill Co.*, 77 Minn. 223. Nor is equal protection denied by a state statute licensing the business of selling farm products on commission: *State v. Wagener*, 77 Minn. 483. Nor by a state statute requiring itinerant vendors to pay a state license of \$200, and a local license of \$100, if in a town of less than fifteen thousand inhabitants, and \$350 if in a town of more than that number: *State v. Foster*, 22 R. I. —, 46 Atl. Rep. 833. A statute imposing a privilege tax on railroad companies "not paying an *ad valorem* tax" is not invalid, though there are but two such companies, since it applies equally to all companies in like condition, and makes a natural and reasonable classification: *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684.

¹ *Magoun v. Illinois Trust, etc.*

An exemption from taxation is valid under the equal protection clause if founded upon a reasonable distinction in principle, and where the discrimination is not purely arbitrary, oppressive, or capricious, and made to depend on differences of color, race, nativity, religious opinions, political affiliations, or other considerations having no possible connection with the duties of citizens as taxpayers.¹ The amount of property ex-

Bank, 170 U. S. 283, where it is held that a state inheritance tax law may discriminate between relatives and between them and strangers, and may grade the rate of the tax upon legacies to strangers by the amount of such legacies, increasing progressively with such amount. In *State v. Hoyt*, 71 Vt. 59, it was held that although the equality clause of the fourteenth amendment does not prohibit classification for the purposes of taxation, it does require that the classification be founded upon some reasonable basis; and such a basis is not found in the fact that goods for the peddling of which a license fee is required are manufactured in other states.

¹*American S. R. Co. v. Louisiana*, 179 U. S. 89. A state statute imposing a franchise upon every corporation or company incorporated or organized in the state or elsewhere, and doing business in such state, does not discriminate against a manufacturing company incorporated elsewhere and doing business both without and within the state, because such statute exempts from the tax manufacturing companies (wherever organized) doing business wholly in such state: *New York v. Roberts*, 171 U. S. 658, affirming *People v. Roberts*, 158 N. Y. 168. A state law imposing upon firms and corporations carrying on the business of refining sugar a license tax, from which planters and farmers refining their own sugar are exempt, does not deny the equal protection of the laws to persons and corporations in a general

sugar refining business: *American S. R. Co. v. Louisiana*, 179 U. S. 89, affirming *State v. American S. R. Co.*, 51 La. An. 562. The exemption, by a state statute, from taxation, of sales of intoxicating liquors by the manufacturer at the manufactory in quantities of one gallon or more, does not constitute an illegal discrimination against a foreign corporation which has its factory in another state; the statute being applicable to such sales at any manufactory in the state without regard to the residence, citizenship, or domicile of the person, firm, or corporation which owns the plant: *Reymann Brewing Co. v. Brister*, 179 U. S. 445. The levy of a specific tax upon the occupation of "emigrant agent," meaning a person engaged in hiring laborers to be employed beyond the limits of the state, does not deny the "equal protection of the laws" in that the business of hiring persons to labor within the state is not subjected to a like tax: *Williams v. Fears*, 179 U. S. 270, affirming s. c., 110 Ga. 584. The equal protection clause is not violated by a state statute which requires merchants or other dealers "who shall buy and sell goods not specially taxed elsewhere in the act" to pay a license tax on the total amount of purchases in or out of the state, except purchases of firm products from the producer; the exemption does not operate as a discrimination against non-resident farmers, merely because it is probable that merchants will buy more products from resident than from non-resident farmers: *Ex parte*

empted from a state inheritance law is entirely in the discretion of the state legislature, and whether much or little does not render the law invalid as denying the equal protection secured by the fourteenth amendment.¹

It has been decided that a city ordinance providing reasonable conditions upon the performance of which a license may be granted to sell a certain article does not violate any provision of the federal constitution.² Nor is the equality clause of the fourteenth amendment violated by a state statute which, in addition to requiring a certain bond from an applicant for

Brown, 48 Fed. Rep. 435; *State v. French*, 109 N. C. 722. The requirement of equal protection is not violated by a state statute exempting tracts of land of less than one thousand acres from certain forfeitures under the tax laws to which larger tracts are made liable: *King v. Mullins*, 171 U. S. 404. Nor by a state statute which, in providing for the extension of city boundaries over certain classes of adjoining lands, exempts agricultural lands from its provisions: *Kansas City v. Union Pac. R. Co.*, 59 Kan. 427. A statute requiring railroad companies to pay into the treasury a certain percentage of their gross earnings in lieu of other taxes on their property, thus exempting land of a railroad company not used in operating its road, does not infringe the provision for equal protection of the laws: *Northern Pac. R. Co. v. Barnes*, 2 N. D. 310. *Contra*, *Northern Pac. R. Co. v. Walker*, 47 Fed. Rep. 681. Nor is that provision disobeyed by a statute taxing corporate bonds secured by mortgage within the state, while the debt of an individual so secured is exempt: *Simpson v. Hopkins*, 82 Md. 478. A state statute exempting from taxation property already taxed in another state does not discriminate between resident and non-resident property holders: *Wilson v. Wiggins*, 7 Okl. 517. A state statute requiring persons who peddle or sell at auction in a certain county to take

out a local license though they may have complied with the general laws, but exempting merchants, peddlers who sell only to merchants, and all citizens of the county who peddle the products of their own growth or manufacture, violates the federal constitution by discriminating, on the sole ground of their residence, against citizens residing outside of the county: *Commonwealth v. Snyder*, 182 Pa. St. 630. That a statute prescribing a penalty for peddling without a license specifies certain articles for the peddling of which no license is required does not violate the fourteenth amendment, as the statute does not discriminate between citizens: *Hays v. Commonwealth (Ky.)*, 55 S. W. Rep. 425.

¹*Magoun v. Illinois Trust, etc. Bank*, 170 U. S. 283. A state inheritance tax law discriminating between life estates with remainder to lineal descendants, and life estates with remainder to collateral heirs or to strangers in blood, etc., by exempting only the second class from the tax imposed, is not a denial of the equal operation of the law: *Billings v. People*, 189 Ill. 472.

²*Gundling v. Chicago*, 177 U. S. 183. In this case it was held that the requirement of equal protection is not violated by a city ordinance requiring a license fee of \$100 for selling cigarettes, and delegating to the mayor of the city the entire subject of granting or revoking li-

a liquor license, imposes a state and county occupation tax, and requires payment of all taxes a year in advance.¹

The constitutional guaranty of the equal protection of the laws is not contravened by state laws providing for the taxation of the interest of mortgagees in land as real estate regardless of the locality of the residence of such mortgagees;² nor by a state statute taxing bonds held by a permanent resident within the state, though issued by a non-resident corporation and secured by a mortgage on property outside of the state.³ And it is not impaired by a state statute requiring every non-resident owner to file, under a penalty of a fine for non-compliance, a list more particularly descriptive of his realty than is required of the resident tax-payer.⁴ It is, however, violated by a state statute imposing a specific tax on persons engaged in selling liquors at wholesale, or in soliciting or taking orders for such liquors to be shipped into the state, without a similar tax upon persons engaged in the like business in reference to liquors manufactured in the state.⁵

A person is not entitled, under the fourteenth amendment, to the equal protection of the laws of a state within the territorial jurisdiction of which he is not physically present.⁶ The designation of "person" in that amendment is not confined to citizens, but includes aliens as well,⁷ and also private corpora-

censes—the mayor being bound to exercise judicial discretion, and there being no proof of discrimination against applicants or of abuse of discretion: *Gundling v. Chicago*, 177 U. S. 183.

¹ *Giozza v. Tiernan*, 148 U. S. 657. A state statute and a city ordinance concerning the licensing of "gift enterprises," as applied to the business of dealers in trading stamps, were held not to constitute a denial of equal protection: *Humes v. Ft. Smith*, 93 Fed. Rep. 857.

² *Savings, etc. Soc. v. Multnomah County*, 169 U. S. 421.

³ *Mackey v. San Francisco*, 113 Cal. 392; *Kirtland v. Hotchkiss*, 100 U. S. 491.

⁴ *Commonwealth v. Holiday*, 98 Ky. 616.

⁵ *Walling v. Michigan*, 116 U. S.

446. Nor is such an act rendered constitutional by a subsequent statute imposing a greater tax upon all persons engaged in the business of manufacturing or selling liquors in the state: *Walling v. Michigan*, *supra*.

⁶ *State v. Travelers' Ins. Co.*, 70 Conn. 590.

⁷ *State v. Montgomery*, 94 Me. 192; *Frazer v. McConway, etc. Co.*, 82 Fed. Rep. 257. Equal protection is denied by a state statute which forbids peddling except under a license that can be granted only to citizens of the United States, and not to aliens: *State v. Montgomery*, 94 Me. 192. Also by a state statute imposing a tax of three cents a day upon employers of foreign-born, unnaturalized male persons, for each day that each of such persons may be employed, and authorizing the deduc-

tions;¹ but the equal protection which a corporation can claim is only that accorded to similar associations within the jurisdiction of the state,² and a state may impose as a condition precedent to the admission within its limits of a corporation of another state or county such license or other tax as it may see fit, even though such tax is not exacted from corporations of its own creation.³ Nor does a state statute taxing corporations deprive any person of the equal protection of the laws

tion of that sum from the wages of such employees: *Frazer v. McConway, etc. Co.*, 82 Fed. Rep. 257. A heavy license fee on the disinterment and removal of a dead body from the place of interment has been sustained, though obviously aimed at a class of aliens: *In re Wong Yung Quy*, 6 Sawy. 442.

¹*Santa Clara County v. Southern Pacific R. Co.*, 118 U. S. 394; *Pembina, etc. Co. v. Pennsylvania*, 125 U. S. 181; *Home Ins. Co. v. New York*, 134 U. S. 594; *Charlotte, C. & A. R. Co. v. Gibbes*, 142 U. S. 386; *Railroad Tax Cases*, 13 Fed. Rep. 122; *San Mateo County v. Southern Pacific R. Co.*, 13 Fed. Rep. 722; *Santa Clara County v. Southern Pacific R. Co.*, 18 Fed. Rep. 385; *Singer Manuf. Co. v. Wright*, 33 Fed. Rep. 121. The reserved power to alter, amend, or repeal a statute constituting a contract with a corporation, exempting it from ordinary taxes, cannot be exercised so as to relieve the state from the effect of the constitutional provision against impairing the obligation of contracts, by a statute which attempts to preserve all the obligations of the corporation in favor of the state, and to take away from the corporation the consideration on the state's part upon which the duty of the corporation to pay a gross-receipt tax rested; such statute is a mere arbitrary exercise of power in denial of the equal protection of the laws: *Duluth & I. R. R. Co. v. St. Louis County*, 179 U. S. 302. Under a constitutional provis-

ion that mortgages shall for the purpose of taxation be deemed an interest in the property, and that, except as to railroads, the value of the property, less that of the mortgage, shall be taxed to the owner, and the value of the mortgage to the mortgagee, it is a discrimination rendering the tax invalid to assess to a railroad company the full value of its mortgaged property without deducting the amount of the mortgages as in valuing the property of natural persons: *Santa Clara County v. Southern Pacific R. Co.*, 18 Fed. Rep. 385. Where a state statute providing for the levy of a fire tax excludes from the benefit and protection which the law should afford the property of railroad companies, it denies to such companies the equal protection of the laws: *Atchison, T. & S. F. R. Co. v. Clark*, 60 Kan. 826, 831.

²*Pembina, etc. R. Co. v. Pennsylvania*, 125 U. S. 181.

³*Philadelphia Fire Assoc. v. People*, 119 U. S. 110; *Pembina, etc. R. Co. v. Pennsylvania*, 125 U. S. 181; *Scottish Union, etc. Ins. Co. v. Herriott*, 109 Iowa 606; *Southern Building, etc. Assoc. v. Norman*, 98 Ky. 204. The New York statute requiring a percentage to be paid to the fire department on all premiums by every fire insurance agent in a certain county of every individual or association not incorporated within the state does not violate the equal protection provision: *Fire Department v. Stanton*, 159 N. Y. 225.

because it discriminates between property owned by corporations and that owned by natural persons.¹

This provision of the fourteenth amendment secures no right to municipal corporations of a state, as against the state, to the equal protection of the laws, which can limit legislation to charge them with public obligations; and their inhabitants, as members of such corporations, have no greater immunity with reference thereto.² Nor is the amendment violated by a state statute apportioning for taxation among several townships funds of a charity the situs of which is in one township.³

Consideration will be given in another chapter⁴ to that clause of the fourteenth amendment of the national constitution which precludes the abridgment by a state of the privileges or immunities of citizens of the United States.

¹*Commonwealth v. Sharon Coal Co.*, 164 Pa. St. 284. A statutory provision for the allowance to citizens and not to railway companies of a discount for the prompt payment of taxes is not a discrimination which renders the act unconstitutional: *Louisville & N. R. Co. v. Louisville (Ky.)*, 29 S. W. Rep. 865. The same is true of a state statute distributing for purposes of taxation the rolling-stock and personal property of railroad companies among the several

counties traversed by the road, and subjecting it to the varying rates of taxation prevailing therein, instead of taxing it in the county of its principal office, which is the method adopted in the case of individuals and other corporations: *Columbus S. R. Co. v. Wright*, 151 U. S. 470, affirming s. c., 89 Ga. 574.

²*State v. Williams*, 68 Conn. 131.

³*Northampton v. Hampshire County Com'rs*, 145 Mass. 108.

⁴*Post*, ch. III.

CHAPTER III.

LIMITATIONS OF THE TAXING POWER BY PARAMOUNT LAW.

Great as is the power of any sovereignty to levy and collect taxes from its citizens, that power in a constitutional country has very distinct and positive limitations.¹ Some of these inhere in its very nature, and exist, whether declared or not declared, in the written constitution;² but some of them it is not uncommon to specify, either out of abundant caution, or to keep them fresh in the minds of those who administer the government. Other limitations spring from the peculiar form of our government, and from the relation of the states to the national authority. Still others are expressly imposed, either by state constitution or by the fundamental law of the Union.

Enforcement of limitations. The nature of some limitations is such that they address themselves exclusively to the legislative department of the government, and what it shall do will be subject to review by no other authority than the people acting in elections. Such, for example, is the limitation that taxes must be determined upon from public motives only, and with the public good in view. It is to be assumed that the legislature will observe it, but whether it has done so can never become a judicial question.³ In most cases, how-

¹ "Taxation is bounded in its exercise by its own nature, essential characteristics, and purpose:" Agnew, J., in *Matter of Washington St.*, 69 Pa. St. 352, 363. See *McFadden v. Longham*, 58 Tex. 579. The power to impose taxes, general or local, which rests with the legislature, is without much express restriction from the constitution, and yet even this power cannot be said to be absolute: *Bush v. Board of Supervisors*, 159 N. Y. 212. There can be no valid tax under an unconstitutional law: *Brown v. Denver*, 7 Colo. 305.

² Outside of express constitutional inhibitions there are limitations upon the powers of every branch of our governments, state and federal. Every branch has its limitations short of absolute power: *State v. Switzler*, 143 Mo. 287. It is observable in the state constitutions that while they enter with considerable minuteness into declarations of individual right, many of the most important principles of government are usually not declared at all, but simply taken for granted.

³ See *ante*, p. 46.

ever, a question whether the limitations upon the taxing power have been observed is or may be a judicial question, and the final determination of it is with the courts.

Public purposes. It is the first requisite of lawful taxation, that the purpose for which it is laid shall be a public purpose.¹ The decision to lay a tax for a given purpose involves a legislative conclusion that the purpose is one for which a tax may be laid; in other words, is a public purpose. But the determination of the legislature on this question is not, like its decision on ordinary questions of public policy, conclusive either on the other departments of the government, or on the people. The question, what is and what is not a public purpose, is one of law; and though unquestionably the legislature has large discretion in selecting the object for which taxes shall be laid, its decision is not final.² In any case in which the legislature shall have clearly exceeded its authority in this regard, and levied a tax for a purpose not public, it is competent for any one who in person or property is affected by the tax, to appeal to the courts for protection. This subject will be considered in another chapter.³

Territorial limitations. Persons and property not within the territorial limits of a state cannot be taxed by it. In such a case the state affords no protection, and there is nothing for which taxation can be equivalent.⁴ This rule is applicable to

¹ *Bush v. Board of Supervisors*, 159 N. Y. 212.

² *State v. Cornell*, 53 Neb. 556.

³ *Post*, ch. IV.

⁴ See *Darwin v. Strickland*, 57 N. Y. 492; *Baltimore v. Hussey*, 67 Md. 112; *Graham v. St. Joseph T'p*, 67 Mich. 652; *Matter of Douglas*, 48 Hun 318; *Dewey v. Des Moines*, 173 U. S. 193; *Indiana v. Pullman Palace Car Co.*, 16 Fed. Rep. 193. The taxing power of the state necessarily stops at the state boundary lines. It cannot reach over into any other jurisdiction to seize upon person or property for purpose of taxation: *Augusta v. Kimball*, 91 Me. 605. Property over which the sovereign power of the state does

not extend cannot be made the subject of taxation in such state: *Dutton v. Board of Review*, 188 Ill. 386. As tax-laws can have no extraterritorial effect, taxes imposed on non-residents whose property is not in the state are null and void: *Liverpool, etc. Ins. Co. v. Board of Assessors*, 51 La. An. 1028. The state has not jurisdiction to tax property of non-residents which has no actual *situs* within the state: *Commonwealth v. Lehigh Valley R. Co.*, 186 Pa. St. 235. The personalty not within the state, of one who has ceased to be a resident, cannot be taxed in such state: *Remey v. Burlington City Council*, 80 Iowa 470. The state cannot tax

the lands of an Indian tribe, which, though they may be within the limits of the state, are exempt from its jurisdiction.¹ It is also applicable to the Indians themselves while they retain within the state their tribal relations,² and to persons who reside on lands purchased by or ceded to the United States for

moneys and credits removed therefrom before the date fixed for the listing of the property, by a guardian who has ceased to be a resident of the state: *Maxwell v. People*, 189 Ill. 603. A tax levied upon an entire property, part of which is without the jurisdiction of the taxing body, is invalid as to such part, and renders the whole assessment void unless the tax against the part within the jurisdiction can be readily separated: *Chicago, B. & Q. R. Co. v. Nebraska City*, 53 Neb. 453; *Sioux City Bridge Co. v. Dakota County*, 61 Neb. — (84 N. W. 607). The limit of a municipality bounded by a navigable river being the low-water mark unless express language to the contrary is used in the act of incorporation, it cannot tax the coal beneath the bed of the river conveyed by the state to private persons: *Gilchrist's Appeal*, 109 Pa. St. 600. A township or borough school district cannot tax that part of a tract of land which lies outside of its boundaries, unless the dividing line is also a county line and the mansion house on the tract lies within the district attempting to tax: *Arthur v. School District*, 164 Pa. St. 410. In the absence of express legislative authority the officers of a school district are without jurisdiction to levy a tax upon real estate not within the limits of their school district; and the tax so levied, no matter for what purpose, is void: *Chicago, B. & Q. R. Co. v. Cass County*, 51 Neb. 369. Property in the hands of an administrator with the will annexed cannot be taxed in Kentucky for years during which the testator was a citizen of another

state: *Boske v. Security Trust & Safety-Vault Co.* (Ky.), 56 S. W. Rep. 524.

¹*The New York Indians*, 5 Wall. 761; *Com'rs v. Simons*, 129 Ind. 193. See *Moore v. Sweetwater*, 2 Wyo. Ter. 8. Lands patented to Indians designated as not competent to manage their own affairs are not taxable: *Auditor General v. Williams*, 94 Mich. 180. Lands granted in fee to an Indian chief were held not subject to taxation, the tribal relation having continued: *Com'rs v. Simons*, 129 Ind. 193; *Wau-pe-man-quah v. Aldrich*, 28 Fed. Rep. 489. Lands within an Indian reservation and patented to an Indian, but after sale to a white man repurchased by another Indian, are not in the latter's hands exempt from taxation: *Revoir v. State*, 137 Ind. 332. Railroad property not exempt because within Indian reservation: *Utah & N. R. Co. v. Fisher*, 116 U. S. 28; *Maricopa & P. R. Co. v. Arizona*, 156 U. S. 347. So of cattle and horses belonging to an Indian post-trader, and kept on an Indian reservation: *Moore v. Beason*, 7 Wyo. 292. See *Cosier v. McMillan*, 22 Mont. 484. So of cattle belonging to white men and grazing upon lands reserved to and leased from Indians: *Gay v. Thomas*, 5 Okl. 1; *Thomas v. Gay*, 169 U. S. 264; *Wagoner v. Evans*, 170 U. S. 588. See *Tresscott v. Hurlbut Land, etc. Co.*, 73 Fed. Rep. 60. As to taxability of railroad track and right of way through reservations: See *Delinquent List v. Territory* (Ariz.), 26 Pac. Rep. 310.

²*State v. Ross*, 7 Yerg. 74. When personalty of Indian becomes subject to taxation: *Keokuk v. Ulam*, 4 Okl. 5.

navy yards, forts, arsenals, etc., where the state has reserved no other jurisdiction or right than that to serve process.¹ But it is not necessary that both person and property should be within the jurisdiction in order to be taxable; it is sufficient if either is.² If a person is domiciled within the state, his personalty, in contemplation of law, has its *situs* there also, and he may be taxed in respect of it at the place of his domicile.³ Within this rule fall debts owing from a non-resident to a resident;⁴ and shares owned by residents in foreign corporations

¹ Commonwealth v. Clary, 8 Mass. 72. It is otherwise where the state in making the cession or consenting to the purchase reserves the right to tax: Fort Leavenworth R. Co. v. Lowe, 27 Kan. 749, 114 U. S. 56. See In re O'Conner, 37 Wis. 379; Cherry County v. Thacher, 32 Neb. 350.

² In re Swift, 137 N. Y. 76.

³ Wilkey v. Pekin, 19 Ill. 160; Rie-
man v. Shepard, 27 Ind. 288; Weaver's
Estate v. State, 110 Iowa (81 N. W. Rep.
603); Griffith v. Carter, 8 Kan. 565;
Commonwealth v. Hays, 8 B. Monr. 1;
Newport v. Ringo's Ex'r, 87 Ky. 635;
Inhabitants of Great Barrington v.
County Com'rs, 16 Pick. 572; Bemis
v. Boston, 14 Allen 366; Nashua Sav-
ings Bank v. Nashua, 46 N. H. 389;
Enston's Estate, 113 N. Y. 174; John-
son v. Oregon City, 2 Or. 327, 3 Or. 13;
Commonwealth v. American Dredg-
ing Co., 122 Pa. St. 386; Lines's Es-
tate, 155 Pa. St. 378; Blood v. Sayre,
17 Vt. 609; Bullock v. Guilford, 59
Vt. 516; Norfolk & W. R. Co. v.
Board, 97 Va. 23; San Francisco v.
Mackey, 22 Fed. Rep. 602. The per-
sonal property of a resident decedent,
wherever situated, within or without
the state, is subject to the inheri-
tance tax: In re Swift, 137 N. Y. 77.
Under a city charter which provides
that "all property not exempt from
taxation under the general laws of
this state shall be subject to taxa-
tion, as herein mentioned, for city
purposes," choses in actions may be
taxed, the domicile of the owner

being the *situs* of this sort of prop-
erty: Trimble v. Mt. Sterling (Ky.), 12
S. W. Rep. 1066.

⁴ Bonds of a foreign corporation
held outside of the state are taxable
at the owner's domicile within the
state: In re Fair's Estate, 128 Cal.
607. See Worthington v. Sebastian,
25 Ohio St. 1. Bonds owned by a
resident of one state may be taxed
there though issued by a non-resi-
dent corporation and secured by a
mortgage on lands outside of the
state: Mackey v. San Francisco, 113
Cal. 392. A state may tax a resi-
dent in respect to a debt owned by
a non-resident and secured by a
mortgage upon lands in another
state: Kirtland v. Hotchkiss, 42
Conn. 426, 100 U. S. 491. Bonds of
the state of Georgia, on deposit with
the treasurer of that state, and owned
by a Louisiana insurance company,
are taxable in Louisiana: State v.
Board of Assessors, 47 La. An. 1644;
Home Ins. Co. v. Board of Assessors,
48 La. An. 451. The registered pub-
lic debt of a state, whether exempted
or taxed by the debtor state, is tax-
able by another state when owned
there: Bonaparte v. Tax Court, 104
U. S. 592. The mere fact that a part
of the capital of a bank is invested
abroad does not exempt that part
from taxation under the internal
revenue law: Nevada Bank v. Sedg-
wick, 104 U. S. 111. Where a New
York corporation holds bonds of for-
eign corporations issued to it in pay-

may be taxed to the owners even though the corporations themselves are taxed in the jurisdiction where their operations are carried on.¹ However, the maxim *mobilia sequuntur personam* is not of universal application, does not rest on any constitutional foundation, and gives way before express law;² and a state may at its option impose taxes on tangible personal property within its limits irrespective of the residence or al-

ment for patent rights granted, the capital thus invested is taxable in New York, since such bonds have their *situs* at the owner's domicile unless kept employed outside of the state: *People v. Campbell*, 138 N. Y. 543. For what moneys and credits without the state a New York corporation is taxable, see, also, *People v. Feitner*, 54 App. Div. (N. Y.) 217. In Georgia it is held that a chose in action owned by a resident, though the debtor is a non-resident, is taxable wherever the evidence of debt is located: *Atlanta Nat. B. & L. Assoc. v. Stewart*, 109 Ga. 80. A statute providing that personalty held in trust by a non-resident, the income whereof is payable to a resident beneficiary, shall be assessed to the latter in the place where he resides, is valid: *Hunt v. Perry*, 165 Mass. 287. Under the Maryland code personalty in a guardian's hands is taxable in the county where the guardian was appointed, though it is outside of the state, and though both guardian and ward are non-residents: *Baldwin v. County Com'rs*, 85 Md. 145.

¹ *Boyd v. Selma*, 96 Ala. 144; *State v. Kidd*, 125 Ala. 413; *Trust Co. v. Parks*, 80 Ill. 170; *Greenleaf v. Board of Review*, 184 Ill. 226; *Henkle v. Keota*, 68 Iowa 334; *Newport v. Ringo's Ex'x*, 87 Ky. 635; *Bacon v. State Tax Com'rs* (Mich.), 85 N. W. Rep. 307; *Ogden v. St. Joseph*, 90 Mo. 522; *State v. Branin*, 23 N. J. L. 484; *State v. Bentley*, 23 N. J. L. 532; *Newark City Bank v. Assessor*, 30 N. J.

L. 13; *North Carolina R. Co. v. Com'rs*, 91 N. C. 454; *McKeen v. Northampton County*, 49 Pa. St. 519; *Whitesell v. Northampton County*, 49 Pa. St. 526; *Worthington v. Sebastian*, 25 Ohio St. 1; *Bradley v. Bauder*, 36 Ohio St. 28. Stocks and bonds of a foreign corporation, owned at the time of his death by a resident of California, are taxable in that state, though pledged for a loan in another state: *Stanford v. San Francisco*, 131 Cal. 34 (63 Pac. Rep. 145). The statute subjecting to taxation the stock of foreign corporations owned by citizens of Michigan is not in contravention of that provision of the federal constitution which declares that full faith and credit shall be given in each state to the public acts of every other state; for no state can exempt property from taxation in another state: *Bacon v. State Tax Com'rs* (Mich.), 85 N. W. Rep. 307, citing *Bonaparte v. Tax Court*, 104 U. S. 592.

² *Pullman Palace Car Co. v. Pennsylvania*, 141 U. S. 18; *Adams Express Co. v. Ohio State Auditor*, 166 U. S. 185; *Bluefields Banana Co. v. Board of Assessors*, 49 La. An. 43; *Comptoir National v. Board of Assessors*, 52 La. An. 1319. In *Board of Com'rs v. Leonard*, 57 Kan. 531, it is said that the maxim referred to in the text is subject to so many exceptions and limitations that it is quite as liable to mislead as to furnish a correct guide, when considered alone.

legiance of the owner,¹ although this would not be true of

¹Green v. Van Buskirk, 7 Wall. 139; Coe v. Errol, 116 U. S. 517; Marye v. Baltimore & O. R. Co., 127 U. S. 117; Pullman Palace Car Co. v. Pennsylvania, 141 U. S. 18; People v. Insurance Co., 29 Cal. 533; Denver & G. R. Co. v. Church, 17 Colo. 1; Howell v. State, 3 Gill 14; Mills v. Thornton, 26 Ill. 300; Rieman v. Shepard, 27 Ind. 288; Liverpool, etc. Ins. Co. v. Board of Assessors, 44 La. An. 760; Parker v. Strauss, 49 La. An. 1173; State v. Dalrymple, 70 Md. 294; Blackstone Manuf. Co. v. Blackstone, 13 Gray 488; Leonard v. New Bedford, 16 Gray 292; Hartland v. Church, 47 Me. 169; Desmond v. Machias, 48 Me. 478; Winkley v. Newton, 67 N. H. 80; State v. Falkinberge, 15 N. J. L. 320; Hoyt v. Com'rs of Taxes, 23 N. Y. 224; People v. Ogdensburgh, 48 N. Y. 390; Wilson v. New York, 4 E. D. Smith 675; Hall v. Fayetteville, 115 N. C. 281; Hood's Estate, 21 Pa. St. 106; Maltby v. Reading R. Co., 52 Pa. St. 140; Union Refrig. Transit Co. v. State, 18 Utah 378. As to taxing personalty where it is located, see Torrent v. Gager, 52 Mich. 506. The property and property rights of a foreigner found within the state are subject to taxation as is other property: Sala's Succession, 50 La. An. 1009. A succession tax in respect of a non-resident intestate's personalty invested or habitually kept by him in the state was sustained: Romaine's Estate, 127 N. Y. 80. One possessed of tangible property on the day of assessment may be taxed for it although it has been sold to a non-resident: Commonwealth v. Gaines, 80 Ky. 489. A state has power to tax property held in trust therein for a non-resident: Price v. Hunter, 34 Fed. Rep. 355. Money or property held by an ancillary administrator is taxable by the state granting such administra-

tion: Dorris v. Miller, 105 Iowa 564. A statute imposing a tax on property "passing from any person who may die seised and possessed thereof, being in this state," applies to property within the state, though the decedent who bequeathed it resided in another state: State v. Dalrymple, 70 Md. 294. Coal shipped from Pennsylvania to supply New Orleans was held legally taxable after arrival at its destination, though kept on board the flats which carried it, and not sold nor consigned to any specially authorized agent: Pittsburg & S. Coal Co. v. Bates, 40 La. An. 226. Logs left for safe keeping by an Iowa company in a bayou on the Illinois side of the Mississippi river are taxable in Illinois: Burlington Lumber Co. v. Willetts, 118 Ill. 559. A state may tax all property which has a *situs* within its limits, regardless of the fact that it may have come from, or is destined to, another state: Kelley v. Rhoads (Wyo.), 63 Pac. Rep. 935. In order to render live-stock taxable it is not necessary that such stock should be intended to remain permanently in the state: Kelley v. Rhoads, 7 Wyo. 237. Where cattle owned by non-residents actually ranged in a county in Oklahoma during the entire year they were held taxable in such county: Prairie Cattle Co. v. Williamson, 5 Okl. 488. See Russell v. Green (Okl.), 62 Pac. Rep. 817. A boat may be taxed where located, though owned by a foreign corporation: Irvin v. New Orleans, etc. R. Co., 94 Ill. 105. It has been held that a vessel enrolled and licensed under the federal navigation laws does not, by engaging in business within a state, become subject to its taxing power where the owner is a non-resident: Roberts v. Charlevoix T'p, 60 Mich. 197; Johnson v. Debary-

property merely passing through the state and not having acquired a *situs* therein.¹

As property lying beyond the jurisdiction of a state is not a subject upon which its taxing power can legitimately be exercised,² that power does not, as a general rule, extend to the intangible personal property of a non-resident, for such property must ordinarily be regarded as having its *situs* at the domicile of its owner.³ It follows that debts and other choses in action

Baya Merchants' Line, 37 Fla. 499. But elsewhere it has been held that the enrolment of a vessel at its non-resident owner's domicile does not prevent its taxation in a state within which is its entire business and where it remains indefinitely: *National Dredging Co. v. State*, 99 Ala. 462. And see *Norfolk & W. R. Co. v. Board*, 97 Va. 23; *Northwestern Lumber Co. v. Chehalis County* (Wash.), 64 Pac. Rep. 909. An unpaid legacy left to a non-resident decedent in the will of a resident decedent is not "property within the state" assessable for purposes of taxation under the New York inheritance tax law of 1887: *In re Phipps*, 143 N. Y. 641.

¹ *Hays v. Steamship Co.*, 17 How. 596; *Mobile v. Baldwin*, 57 Ala. 62; *Chauvenet v. Com'rs*, 3 Md. 259; *Hooper v. Baltimore*, 12 Md. 464; *Conley v. Chedie*, 7 Nev. 336; *Robinson v. Langley*, 18 Nev. 71; *Hoyt v. Com'rs*, 23 N. Y. 242; *State v. Engle*, 34 N. J. L. 425; *McKeen v. Northampton County*, 49 Pa. St. 519; *Whitesell v. Northampton County*, 49 Pa. St. 526; *Union Bank v. State*, 9 Yerg. 489. One merely driving his sheep through a county cannot be subjected to payment for a license tax imposed on persons engaged in the business of "raising, grazing, and pasturing sheep" within the county: *Mono County v. Flanigan*, 130 Cal. 105. Where a non-resident's sheep brought into a state to graze were afterwards driven through it to be

shipped into another state, exportation of them did not begin so as to exempt them from taxation until they were started on their final journey by rail: *Kelley v. Rhoads*, 7 Wyo. 737. Logs cannot be taxed by a state in which they are temporarily detained while in transit between two other states: *Coe v. Errol*, 62 N. H. 303, 116 U. S. 517; *Connecticut River L. Co. v. Columbia*, 63 N. H. 286. See *Nelson Lumber Co. v. Loraine*, 22 Fed. Rep. 54; *Brown County Com'rs v. Standard Oil Co.*, 103 Md. 302. Railway cars in transit through a state so that they have no *situs* there are not subject to assessment or taxation in that state: *State v. Stephens*, 146 Mo. 662. Cars used on a railroad within a state may be taxed by such state as having a *situs* within its limits even though they are owned by a non-resident corporation, and though they are not continuously in the state: *Union Refrig. Transit Co. v. Lynch*, 18 Utah 378, 177 U. S. 149; *Carlisle v. Pullman Palace Car Co.*, 8 Colo. 320; *Denver & R. G. Co. v. Church*, 17 Colo. 1; *Hall v. American Refrig. Transit Co.*, 24 Colo. 291; *American Refrig. Transit Co. v. Hall*, 174 U. S. 70; *Reinhart v. McDonald*, 76 Fed. Rep. 403.

² *Railroad Co. v. Jackson*, 7 Wall. 262; *State Tax on Foreign Held Bonds*, 15 Wall. 300; *New York, L. E. & W. R. Co. v. Pennsylvania*, 153 U. S. 628.

³ *Enston's Estate*, 113 N. Y. 174; *Small's Estate*, 151 Pa. St. 1; *Howell v. Gordon* (Mich.), 86 N. W. Rep. 1042. In

are, with certain exceptions which will be noticed hereafter, taxable only in the state where the owner resides;¹ and the fact that demands owing to a non-resident are secured by mortgages upon property within the state does not give them

the case of *Adams Express Co. v. Ohio State Auditor*, 166 U. S. 185, it is said that nothing in the federal constitution prohibits a state from taxing at its real value intangible property within its limits.

¹ *Railroad Co. v. Jackson*, 7 Wall. 262; *State Tax on Foreign Held Bonds*, 15 Wall. 300; *New York, L. E. & W. R. Co. v. Pennsylvania*, 153 U. S. 628; *San Francisco v. Mackey*, 22 Fed. Rep. 602; *Walker v. Jack*, 88 Fed. Rep. 576, 21 C. C. A. 462; *De Vignier v. New Orleans*, 4 Woods 206; *Territory v. Delinquent Tax List (Ariz.)*, 24 Pac. Rep. 182; *Cooper v. Beers*, 143 Ill. 25; *Scripps v. Board of Review*, 183 Ill. 278; *Hayward v. Board of Review*, 189 Ill. 284; *Senour v. Ruth*, 140 Ind. 318; *Buck v. Miller*, 147 Ind. 586; *Barber Asphalt Paving Co. v. New Orleans*, 41 La. An. 1015; *Liverpool, etc. Ins. Co. v. Board of Assessors*, 44 La. An. 760; *Clason v. New Orleans*, 46 La. An. 1; *Liverpool, etc. Ins. Co. v. Board of Assessors*, 51 La. An. 1028; *Baltimore v. Hussey*, 67 Md. 112; *Oliver v. Washington Mills*, 11 Allen 268; *Graham v. St. Joseph's T'p*, 67 Mich. 652; *State v. Smith*, 68 Miss. 79; *Holland v. Com'rs*, 15 Mont. 460; *State v. Vansyckle*, 49 N. J. L. 366; *Enston's Estate*, 113 N. Y. 174; *In re Bronson*, 150 N. Y. 1; *North Carolina R. Co. v. Com'rs*, 91 N. C. 454; *Worthington v. Sebastian*, 25 Ohio St. 8; *Grant v. Jones*, 39 Ohio St. 506; *Myers v. Seaberger*, 45 Ohio St. 232; *Small's Estate*, 151 Pa. St. 1; *Hayne v. Delieseline*, 3 McCord 374; *South Nashville Street R. Co. v. Morrow*, 3 Pickle 406; *Bullock v. Guilford*, 59 Vt. 516; *Commonwealth v. Chesapeake & O. R. Co.*, 27 Grat. 344; *Ohio Valley, B. &*

L. Assoc. v. County Court, 42 W. Va. 818. Notes and accounts held by an attorney merely for collection and the remission of moneys to the non-resident owner cannot be said to have a *situs* in the state for the purpose of taxation: *Herron v. Keeran*, 59 Ind. 472. See *State v. Scottish American Mortg. Co.*, 76 Minn. 155. A foreign insurance company domiciled out of the state, but collecting premiums therein through an agent, is not liable for a tax levied on such premiums, they being "credits" having their *situs* at the company's domicile: *Railey v. Board of Assessors*, 44 La. An. 765. A non-resident corporation shipped meats to its place of business in the state, and there its business manager sold them for cash or on thirty days' time, remitting daily all moneys collected; and it was held that notes and accounts due from such sales did not have such a business *situs* in the state as to render them taxable there: *Vicksburg v. Armour Packing Co. (Miss.)*, 24 S. Rep. 224. Where a resident of one state owns stock representing the debt of a city of another state, he is not taxable by the latter state therefor: *Baltimore v. Hussey*, 67 Md. 112. A tax laid upon the stock of a corporation owned entirely by a non-resident of the state, and having all its property in another state, was held void: *San Francisco v. Mackey*, 22 Fed. Rep. 602. Bonds of a local corporation left at the residence of a non-resident owner are not, at his death, subject to the transfer tax as property within the state: *In re Bronson*, 150 N. Y. 1. A tax on money set apart by a corporation to pay interest accruing on

a *situs* there for purposes of taxation.¹ But a state may tax mortgages upon real estate within its borders even though such mortgages are owned by non-residents;² and it is also within the taxing power of a state to tax a non-resident's money and credits when the money is invested and the investment controlled by a resident agent of the owner, especially if the agent has in his possession the evidences of indebtedness.³ So, credits in the hands of resident trustees in trust for non-resident beneficiaries may be taxed.⁴ It has been held that a

foreign-held bonds is not a tax on the bonds but on the earnings of the corporation which pays the interest, and is sustainable: *Railroad Co. v. Collector*, 100 U. S. 595; *United States v. Railway Co.*, 106 U. S. 327.

¹ *State Tax on Foreign Held Bonds*, 15 Wall. 300; *Territory v. Delinquent Tax List (Ariz.)*, 24 Pac. Rep. 182; *Mackey v. San Francisco*, 113 Cal. 392; *Goldgart v. People*, 106 Ill. 25; *Senour v. Ruth*, 140 Ind. 318; *Buck v. Miller*, 147 Ind. 586; *Latrobe v. Baltimore*, 19 Md. 13; *State v. Scottish Am. Mortg. Co.*, 76 Minn. 155; *State v. Smith*, 68 Miss. 79; *Holland v. Com'rs*, 15 Mont. 460; *King v. Manning*, 40 N. J. L. 461; *State v. Vansyckle*, 49 N. J. L. 366; *Myers v. Seaberger*, 45 Ohio St. 23; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406.

² *Savings, etc. Soc. v. Multnomah County*, 169 U. S. 421; *Detroit Common Council v. Board of Assessors*, 91 Mich. 78; *Allen v. National Bank (N. J.)*, 48 Atl. Rep. 78; *Mumford v. Sewell*, 11 Or. 67; *Crawford v. Linn County*, 11 Or. 482; *Poppleton v. Yamhill County*, 18 Or. 377; *Dundee Mortg. Co. v. School Dist.*, 10 Sawy. 52; *Dundee Mortg. Co. v. Parrish*, 11 Sawy. 92. The first of these cases restricts the language on this point used in *State Tax on Foreign Held Bonds*, 15 Wall. 300.

³ *Walker v. Jack*, 88 Fed. Rep. 576, 21 C. C. A. 462; *New Orleans v. Semple*, 175 U. S. 309; *People v. Home Ins.*

Co., 29 Cal. 534; *People v. Davis*, 112 Ill. 272; *Herron v. Keeran*, 59 Md. 472; *Eversole v. Cook*, 92 Ind. 222; *Buck v. Miller*, 147 Ind. 586; *Hutchinson v. Board of Equalization*, 66 Iowa 35; *Comptoir National v. Board of Assessors*, 52 La. An. 1319; *Jefferson's Estate*, 35 Minn. 215; *Finch v. York County*, 19 Neb. 50; *Redmond v. Com'rs*, 87 N. C. 122; *People v. Trustees*, 48 N. Y. 390; *People v. Smith*, 88 N. Y. 576; *Billingshurst v. Spink County*, 5 S. D. 84; *Catlin v. Hull*, 21 Vt. 152. See *In re Fair's Estate*, 128 Cal. 607; *Board of Com'rs v. Leonard*, 57 Kan. 531. Non-negotiable notes representing loans made in Louisiana by the agent of a foreign corporation doing business therein and kept by such agent are taxable in that state: *Comptoir National v. Board of Assessors*, 52 La. An. 1319. Where a non-resident owner of land in the state sells it by an executory contract which is held in the state by his agent, such contract is taxable as personalty where held; the fiction that a debt follows the creditor's person does not govern in such a case: *Redmond v. Com'rs*, 87 N. C. 122. A foreign corporation having an agent in the state, and placing money in the bank subject to his check, was held liable to taxation on such fund: *Bluefields Banana Co. v. Board of Assessors*, 49 La. An. 43.

⁴ *Detroit v. Lewis*, 109 Mich. 155. See *Price v. Hunter*, 34 Fed. Rep. 355. And the fact that the trustee was

deposit of money in a bank, although technically a credit, is still money for all practical purposes, and as such taxable, although belonging to a non-resident.¹ In the case of a chose in action represented by a negotiable bond, it may, perhaps, be held that the evidence of title is in such form, and is so important an element of the value of what it represents, as to make it closely analogous to tangible property, and to give it a *situs* for taxation where the negotiable evidence of its existence actually is, even though the owner may live elsewhere.²

Shares of corporate stock may be given by the state which creates or licenses the corporation a *situs* within the state for the purpose of taxation, so as to render them taxable though their owner is a non-resident.³

appointed by the court of another state is immaterial: *In re Ailman*, 17 R. I. 362. Under the Pennsylvania statute bonds held by an active trustee residing in Pennsylvania and appointed by the will of a resident in that state were held taxable there, though the courts of another state exercised jurisdiction of the settlement of the estate of the testator by whose will the trust was created: *Guthrie v. Pittsburgh, C., C. & St. L. R. Co.*, 158 Pa. St. 433. An administrator residing in the state and holding, as such, stocks and bonds, is liable to taxation on them here, although the distributees or beneficial owners may be non-residents: *Baldwin v. Shine*, 84 Ky. 502.

¹ *In re Romaine*, 127 N. Y. 80; *In re Houdayer's Estate*, 150 N. Y. 37. In *Clason v. New Orleans*, 43 La. An. 1, moneys standing to the credit of a non-resident firm on the books of a bank were held not taxable: but in the somewhat earlier case of *Liverpool, etc. Ins. Co. v. Board of Assessors*, 44 La. An. 760, an assessment upon the cash deposited in a bank, of a foreign corporation, necessary here for its business purposes, was sustained; and *Parker v. Strauss*, 29 La. An. 1173, is authority that the non-resident owner of a bank deposit

is not exempt under a statute which purposes to tax all personal property within the state. Money on deposit in a bank in Indiana, held for the receiver of an insolvent mutual benefit assessment society to whom it had been turned over by receivers in other states, and payable to claimants scattered over the country, is taxable in Indiana by the county where it is deposited: *Schmidt v. Failey*, 248 Ind. 159.

² See what is said, *obiter*, in *Walker v. Jack*, 89 Fed. Rep. 576, 21 C. C. A. 462, and in *State Tax on Foreign Held Bonds*, 15 Wall. 300. Bonds of a foreign corporation kept with a safety-deposit company in New York at the time of a non-resident owner's death are subject to a succession tax under a statute imposing such tax in respect of "property over which this state has any jurisdiction for the purposes of taxation:" *Whiting's Estate*, 150 N. Y. 27. In Tennessee it is held that negotiable bonds can constitutionally be taxed only by the state or taxing agency which has jurisdiction of their owner: *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406.

³ *State v. Travelers' Ins. Co.*, 70 Conn. 590; *Baltimore v. City Passenger R. Co.*, 57 Md. 31; *American Coal*

In the absence of legislative provision to the contrary, judgments, like other debts, have their *situs* at the domicile of the creditor.¹ It seems, however, that a state has power to tax all judgments rendered by its courts and remaining unsatisfied, even though owned by non-residents.²

The *situs* for taxation of the property, tangible or intangible, of a telegraph company, an express company, or a railroad company operating in several different states, is not confined to the state by which the company was chartered, or in which its home office is located, but may be regarded as distributed wherever the tangible property is located and the work is carried on; and it is not objectionable, as imposing a tax upon property beyond the jurisdiction, for a state to assess the property within its limits at such proportion of the value of the entire property or capital stock of the company as the length of line operated in the state bears to the entire length of line.³ It has also been held that the exaction, when a domestic cor-

Co. v. County Com'rs, 57 Md. 185. See State v. Travelers' Ins. Co. (Conn.), 47 Atl. Rep. 299; Commercial National Bank v. Chambers (Utah), 61 Pac. Rep. 560. Shares of stock in a New York corporation kept at a non-resident owner's residence are "property within the state" subject to the transfer tax: In re Bronson, 150 N. Y. 1. / It is competent to provide by law for taxing shares in corporations at the place where the business is carried on: Tappan v. Merchants' National Bank, 19 Wall. 490; Stockholders of Bank v. Abington, 88 Va. 298.

¹ Meyer v. Pleasant, 41 La. An. 645; People v. Eastman, 25 Cal. 601; Dykes v. Lockwood Mortg. Co., 2 Kan. App. 217.

² Board of Com'rs v. Leonard, 57 Kan. 531. This case holds, however, that there is no statutory provision in Kansas authorizing judgments to be taxed except at the owner's domicile.

³ Western Union Tel. Co. v. Massachusetts, 125 U. S. 530; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18; Attorney-General v. West-

ern Union Tel. Co., 141 U. S. 40; Pittsburgh, C., C. & St. L. R. Co. v. Backus, 154 U. S. 421; Cleveland, C., C. & St. L. R. Co. v. Backus, 154 U. S. 439; Western Union Tel. Co. v. Taggart, 163 U. S. 1; Adams Express Co. v. Ohio State Auditor, 165 U. S. 194, 166 U. S. 185; Adams Express Co. v. Kentucky, 166 U. S. 171; Pullman's Palace Car Co. v. Twombly, 29 Fed. Rep. 658; Attorney-General v. Western Union Tel. Co., 33 Fed. Rep. 129; Reinhart v. McDonald, 76 Fed. Rep. 403; Cleveland, C., C. & St. L. R. Co. v. Backus, 133 Ind. 513; Pittsburgh, C., C. & St. L. R. Co. v. Backus, 133 Ind. 625; Evansville & I. R. Co. v. West, 138 Ind. 697; Western Union Tel. Co. v. Taggart, 141 Ind. 281; State v. Adams Express Co., 144 Ind. 549; State v. Jones, 51 Ohio St. 542; Commonwealth v. Pullman's Palace Car Co., 107 Pa. St. 156; Wells, Fargo & Co.'s Express v. Crawford County, 63 Ark. 576. Where the equipment of a domestic railroad company is used interchangeably upon its lines within and without the state, its stock is to be taxed only in the proportion that the number of miles operated and

poration is consolidated with corporations of other states, of fees proportioned to the capital stock of the new corporation, involves no attempt on the part of the state to extend its taxing power beyond the territorial limits.¹ And a statute providing for the taxation of express companies is not invalid because it provides that in valuing their property their gross earnings from contracts made with railroad companies extending to points without the state may be considered.²

Real property out of the state cannot be taxed to the owner within it,³ while on the other hand all real estate of a non-resident is taxable where it lies, though the tax will be a lien upon the land only, and cannot be made a personal charge upon the non-resident owner.⁴ And as no state is under obligation to

equipped in one state bears to the entire mileage: *Commonwealth v. Delaware, L. & W. R. Co.*, 145 Pa. St. 96.

¹ *Ashley v. Ryan*, 153 U. S. 436, 49 Ohio St. 504.

² *State v. State Board*, 3 S. D. 338.

³ *Witherspoon v. Duncan*, 4 Wall. 210; *Jones v. Columbus*, 25 Ga. 610; *Turner v. Burlington*, 16 Mass. 208; *Berlin Mills v. Wentworth's Location*, 60 N. H. 156; *Winnepiseogee Lake Manuf. Co. v. Gilford*, 64 N. H. 337; *Winkley v. Newton*, 67 N. H. 80; *Commonwealth's Appeal*, 128 Pa. St. 603. The collateral inheritance tax is within the defect of power to impose it on land outside of the state: *Commonwealth v. Coleman's Administrator*, 52 Pa. St. 468; *Bittinger's Estate*, 129 Pa. St. 338; *Handley's Estate*, 181 Pa. St. 339. Where a testator residing in Pennsylvania had peremptorily directed a sale of his lands in another state, and a distribution of the proceeds, the doctrine of conversion was applied, and it was held that the actual *situs* of the land was immaterial, as what passed under the will was not the land but the proceeds, which were personalty, and liable to the collateral inheritance tax: *Miller v. Commonwealth*, 111 Pa. St. 321; *Williamson's Estate*, 153 Pa. St. 508. So, where land in Pennsylvania was owned by a testator in

New York, whose will made an equitable conversion, the land was held to have become personalty, and, as following the owner's domicile, not to be taxable in Pennsylvania: *Coleman's Estate*, 159 Pa. St. 231. Where the conversion is not imperative but only permissive, and rests in the discretion of the executors or others, it does not become operative until the exercise of the discretion, and in the meantime the land retains its normal character: *Drayton's Appeal*, 61 Pa. St. 172; *Miller v. Commonwealth*, 111 Pa. St. 321. It is also held in Pennsylvania that lands in another state are not subject to the collateral inheritance tax, notwithstanding directions to the executors to sell the lands, where a time in the future is specified for the sale: *Hale's Estate (Commonwealth's Appeal)*, 161 Pa. St. 181; *Handley's Estate*, 181 Pa. St. 339. In New York the doctrine of equitable conversion, under instructions to an executor, of land in another state into personalty, thus rendering the property liable to the collateral inheritance tax, has not been adopted: *In re Swift*, 137 N. Y. 77; *In re Curtis*, 142 N. Y. 219.

⁴ *Dewey v. Des Moines*, 173 U. S. 193. Where, however, land was personally assessed to a non-resident, and his agent appeared and only ob-

permit a foreign corporation to carry on business, or exercise franchises, within its territory, the permission to do so may be granted under such restrictions, or permitted on such conditions regarding taxation, as the state may think proper or prudent to impose,¹ provided such conditions are not repugnant to the constitution of the state,² or to the constitution and laws of the United States.³

Taxation and representation. There is a maxim in our government that the representatives of the people must impose the taxes the people are to pay. The form it sometimes takes is, "taxation and representation go together." The maxim is familiar in English law, where it became established as the result of a long, and at times bloody, controversy between the representatives of the people on one side, and the crown on the other. The meaning there was the same that had been contended for in other countries; that the imposition of taxes was essentially a legislative power, and the sovereign could levy none except as they were granted by the representatives of the realm.⁴ In America the corresponding contest assumed

jected to the valuation, it was held that he could not afterwards, in a suit against the assessors, treat the assessment as void: *Hilton v. Fonda*, 86 N. Y. 339.

¹ *Bank of Augusta v. Earle*, 13 Pet. 519; *Paul v. Virginia*, 8 Wall. 163; *Ducat v. Chicago*, 10 Wall. 410; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566; *Doyle v. Ins. Co.*, 94 U. S. 535; *St. Clair v. Cox*, 106 U. S. 350; *Pembina, etc. Co. v. Pennsylvania*, 125 U. S. 181; *Bell's Gap R. Co. v. Commonwealth*, 134 U. S. 232; *Horn Silver Mining Co. v. New York*, 143 U. S. 305; *Ashley v. Ryan*, 153 U. S. 436; *New York v. Roberts*, 171 U. S. 658; *Fireman's Benevolent Assoc. v. Lounsbury*, 21 Ill. 511; *Ducat v. Chicago*, 48 Ill. 172; *Cincinnati Mut. H. Assur. Co. v. Rosenthal*, 55 Ill. 85; *Western, etc. Tel. Co. v. Lieb*, 76 Ill. 172; *Scottish Union, etc. Ins. Co. v. Herriott*, 109 Iowa 606; *Fire Department v. Noble*, 3 E. D. Smith 440; *Fire Department v. Wright*, 3 E. D. Smith 453; *Degroot v. Van Dwyer*,

20 Wend. 390; *Trustees, etc. v. Roome*, 93 N. Y. 313; *People v. Horn Silver Mining Co.*, 105 N. Y. 76; *People v. Imlay*, 20 Barb. 68; *Commonwealth v. Melton*, 12 B. Monr. 212; *Tatem v. Wright*, 23 N. J. L. 429; *Commonwealth v. New York, L. E. & W. R. Co.*, 129 Pa. St. 463; *Fire Department v. Helfenstein*, 16 Wis. 136.

² *San Francisco v. Liverpool, etc. Ins. Co.*, 74 Cal. 113.

³ *Insurance Co. v. French*, 18 How. 404; *Doyle v. Insurance Co.*, 94 U. S. 535; *Pensacola Tel. Co. v. Western Union Tel. Co.*, 96 U. S. 1; *Pembina, etc. Co. v. Pennsylvania*, 125 U. S. 181; *Horn Silver Mining Co. v. New York*, 143 U. S. 305; *Stockton v. Railroad Co.*, 32 Fed. Rep. 14.

⁴ See Clermont's note to Fortescue's *De Laudibus*, p. 28; also *Bates' Case*, 2 State Trials 371, *Broom's Const. Law* 247; *Hampden's Case*, 3 State Trials 825, *Broom's Const. Law* 306, and note, 370. Similar but less successful contests for the same principle in France and Spain are nar-

a different phase, and the maxim took on a different meaning as a rallying cry in the contest for independence. The American colonies insisted upon the right of the colonial legislatures to vote the local taxes; disputing any such right in the parliament of Great Britain, which was a body in which the colonists had and could have no representatives. That body, it was claimed, could legitimately exercise over them the authority only of an imperial legislature to regulate external concerns, and those of the empire at large, leaving internal concerns to the control of their own representatives. What the maxim really meant was, that the local legislature must make the local laws; it was violated in the particular of taxes, and consequently brought that subject prominently to notice, though the principle itself was general. The same principle has sometimes been appealed to as if it meant that *no person* could be taxed unless in the body which voted the tax he was represented by some one in whose selection he had a voice; but it never had any such meaning, and never could have, without excluding from taxation a very large proportion of all the property of the state.¹ If the privilege of voting for representatives in the government were the only or even the principal benefit received from government, there might be the highest reason in exempting the non-voting infant or alien from taxation; but this privilege to any particular individual, as compared with the protection of life, liberty, and property, is really insignificant. And so long as all persons cannot participate in government, the limits of exclusion and admission must always be determined on considerations of general public policy. It is not doubted that, so far as can be prudently and safely permitted, all who are to pay taxes should be allowed a voice in raising them; if for no other reason, because those they vote they will more willingly and cheerfully pay.² But the maxim that tax-

rated by Mr. Hallam and other writers.

¹ The general principle in regard to taxation and representation does not, as practically administered, mean that no person, man, woman or child, resident or non-resident, shall be taxed, unless he was represented by some one for whom he voted: Thomas v. Gay, 169 U. S. 264. The

levy of a tax by a territorial government, upon personal property located on an Indian reservation not embraced in any organized county, is not taxation without representation: Ibid.

² The aim of all the contests from which have sprung the liberties of England and America has been to establish and defend the principle of

ation and representation go together is only true when understood in a territorial sense which embraces the state at large; every person in the state being represented in its legislative body, and that body determining the taxation not only for the state at large, but also, within certain limits, for each division and municipality of the state.¹ The local right is subordinate to this general authority.

self taxation, as that which must constitute the main security against oppression. Mr. Burke insists upon this in his speech on Conciliation of America. And see Works of Madison, III, 105. The sense of the oppression of any burden is greatly increased if they who are to bear it are to do so, not voluntarily, but at the command of others. Locke expresses this idea when, in his Treatise on Civil Government, he says, of a burden imposed as compared to one voluntarily assumed, that "it may be all one to the purse, but it worketh diversely to the courage." This is well illustrated in English history; for heavy taxation dates from the time when the right of the commons to grant the taxes became finally settled. But the chief importance in the right of those who pay taxes to vote them consists in this: that in monarchical countries it constitutes the only substantial and continuous check upon tyranny, and in any country the only security against robbery under the forms of law. As the Spanish Cortes said in one of their remonstrances, "their remains no other privilege or liberty which can be profitable to subjects if this be taken away:" Hallam's Middle Ages, ch. IV. The idea is well expressed by Lawrence, J., in *Harward v. Drainage Co.*, 51 Ill. 130. See, also, *Gage v. Graham*, 57 Ill. 144; *People v. Hurlburt*, 24 Mich. 44. It is very justly laid down that a tax law is to be so construed as to harmonize with the principle that the

people are not to be taxed except with their own consent or that of officers truly representing them: *Keasy v. Bricker*, 60 Pa. St. 9. In Indiana it has been decided that where the boundaries of a township have been extended after it has voted aid to a work of internal improvement, the territory brought in cannot be subjected to the tax so voted: *Alvis v. Whitney*, 43 Ind. 83. See *Galesburg v. Hawkinson*, 75 Ill. 152; *Rader v. Road District*, 36 N. J. L. 273. A city newly incorporated in a parish, and not represented on the police jury, was held not liable to taxation by such jury: *Felix v. Wagner*, 39 La. An. 391.

¹See *Steward v. Jefferson*, 3 Harr. 335; *Clark v. Leathers* (Ky.), 5 S. W. Rep. 576; *State v. Williams*, 68 Conn. 131. The levy of betterments pursuant to a statute is not an unconstitutional exercise of the taxing power, the taxpayers being represented in the legislature which imposed the tax: *Masonic Building Assoc. v. Brownell*, 164 Mass. 306. That the property of persons who have not the right to vote is taxable, see *Wheeler v. Wall*, 6 Allen 558; *Smith v. Macon*, 20 Ark. 17. In *State v. Ross*, 7 Yerg. 74, 77, Catron, Ch. J., has something to say about the tyranny of taxation without representation, but the case did not call for it. In *Marr v. Enloe*, 1 Yerg. 452, where the power to authorize a county court to levy taxes for county purposes was denied, stress was laid on the fact that the members of the court were not

To what extent the federal government may rightfully levy taxes in districts not represented in the federal legislature is perhaps not entirely clear. In the District of Columbia, which by the national constitution was set apart for federal purposes

elected by the people. Upon the general right of the people to tax themselves through their representatives, see *Pope v. Phifer*, 3 Heisk. 682; *Sanborn v. Rice Co.*, 9 Minn. 258; *People v. Hurlburt*, 24 Mich. 44; *People v. Chicago*, 51 Ill. 58; *People v. Batcheller*, 53 N. Y. 128; *State v. Lefingwell*, 54 Mo. 458. It has often been decided that a state may compel a municipality to tax itself for police purposes. See *Taylor v. Board of Health*, 31 Pa. St. 73; *People v. Mahaney*, 13 Mich. 481; *Davock v. Moore*, 105 Mich. 120; *Gooch v. Exeter (N. H.)*, 48 Atl. Rep. 1100. And for highways and other like purposes of general concern. See *Harrison Justices v. Holland*, 3 Grat. 247; *State v. Williams*, 68 Conn. 131; *Barber Asphalt Paving Co. v. Gogreve*, 41 La. An. 251; *Revell v. Annapolis*, 81 Md. 1; *Browne v. Turner*, 174 Mass. 150, 176 Mass. 9. But these subjects will be elsewhere considered. Tax laws are undoubtedly to be construed if possible, so as not to impose taxes without the consent of the people taxed, or of their immediate representatives; so held of a tax for military bounty purposes: *Keasy v. Bricker*, 60 Pa. St. 9; and see *Lexington v. McQuillan's Heirs*, 9 Dana 513, 517; *Madison Co. v. The People*, 58 Ill. 456, 463; *Hampshire v. Franklin*, 16 Mass. 75, 83; *Cheaney v. Hooser*, 9 B. Monr. 330; *Maltus v. Shields*, 2 Met. (Ky.) 553. And we shall endeavor to show further on, that, in some cases, this assent is necessary. That a stranger, coming into a town, becomes liable to a license tax as an "inhabitant and member of the corporation," see *Plymouth v. Pettijohn*, 4 Dev. 591; *Whitfield v. Longest*, 6 Ired. 268. "It is just that it should be so; for, as the defendant has, in the security of his property, the benefit of the night watch and of the other police establishments, he ought to contribute reasonably towards their expenses." Per Ruffin, Ch. J., in *Wilmington v. Roby*, 8 Ired. 250, 254; and see *Edenton v. Capeheart*, 71 N. C. 156. Under proper charter authority a city council may tax both resident and non-resident attorneys who have their offices in the city and practice their profession there: *Petersburg v. Cocke*, 94 Va. 244. In *Falmouth v. Watson*, 5 Bush 660, 661, an act was sustained which empowered the town of Falmouth to impose a license tax not exceeding \$100 on the sale, by retail, of all spirituous, vinous or malt liquors in said town, or within *one mile* thereof. This was put on the ground of police regulation. A city ordinance taxing wagons used in the city for pay, cannot apply to wagons owned by those residing outside who employ them in hauling into and out of the city. If it could, it would be taking property for private use—for the use of that particular community of which the owner formed no part: *St. Charles v. Nolle*, 51 Mo. 122. Where a town is authorized to tax non-residents doing business within it, with a proviso that those taxed should have the right to vote at municipal elections, this proviso may be repealed without affecting the right to tax. The maxim that taxation and representation go together only applies to political communities: *Moore v. Fayetteville*, 80 N. C. 154. Where the state undertook to provide a park for the city of St. Louis, outside the city

and placed under the exclusive jurisdiction of congress, the power is unlimited, and whoever becomes a resident of the district must do so with the understanding that he can participate in the government only to the extent that congress may permit.¹ There can be no doubt also of the right of the federal government to levy stamp taxes and imposts of every description, by laws which shall have uniform operation throughout all the states and territories within the jurisdiction of the general government. But taxes for territorial purposes, corresponding to the taxes which are levied by the states for state purposes, it is theoretically at least the right of the people of the territory, when organized with a local legislature, to levy and expend for themselves. It is not to be supposed that the right will be denied by the general government, and if it should be, and the local taxes be imposed and expended by the direct interposition of congressional authority, it is not too much to say that such action would be inconsistent with the maxim of government now under consideration, whether valid in law or not.²

The power not to be delegated. It is a general rule of constitutional law that a sovereign power conferred by the people upon any one branch or department of the government is not to be delegated by that branch or department to any other.³

This is a principle which pervades our whole political system, and, when properly understood, admits of no exception.

limits, and created a board of commissioners not residing in the district, who were to levy taxes within the district of the park, for its establishment and support, it was held that they did not constitute a municipal corporation; that the park was not established for municipal but for general purposes, and that the proposed taxes were unwarranted by the constitution. *State v. Leffingwell*, 54 Mo. 458.

¹ *Loughborough v. Blake*, 5 Wheat. 317, 324. See, also, *Kendall v. United States*, 12 Pet. 524. The power of congress to exercise exclusive jurisdiction in all cases within the Dis-

trict of Columbia, includes the power of taxation: *Parsons v. District of Columbia*, 170 U. S. 45. And of special taxation or assessment for local improvements: *Bauman v. Ross*, 167 U. S. 548.

² Upon the subject of territorial powers of taxation, the following cases are instructive: *Miners' Bank v. Iowa*, 12 How. 1; *Vincennes Univ. v. Indiana*, 14 How. 268; *Williams v. Bank of Michigan*, 7 Wend. 539; *Swan v. Williams*, 2 Mich. 427.

³ *State v. Des Moines*, 103 Iowa 76; *Inhabitants v. Allen*, 61 N. J. L. 228; *Reelfoot Lake Levee Dist. v. Dawson*, 97 Tenn. 151.

And it is applicable with peculiar force to the case of taxation.¹ The power to tax is a legislative power.² The people have created a legislative department for the exercise of the legislative power; and within that power lies the authority to prescribe the rules of taxation, and to regulate the manner in which those rules shall be given effect. The people have not authorized this department to relieve itself of the responsibility by a substitution of other agencies.³ But it is never assumed by the people that the legislature can take such supervision of all the infinite variety of interests in the state, and of all local as well as general affairs, as to be able to determine in every instance precisely what is needed in matters of taxation, and precisely what purposes shall at any time, under the particular circumstances, be provided for. There is a difference between making the law and giving effect to the law; the one is legislation and the other administration. We conceive that the legislature must, in every instance, prescribe the rule under which taxation may be laid; it must originate the authority under which, after due proceedings, the tax gatherer demands the contribution; but it need not prescribe all the details of action, or even fix with precision the sum to be raised or all the particulars of its expenditure. If the rule is prescribed which, in its administration, works out the result, that is sufficient; but to refer the making of the rule to another authority, would be in excess of legislative power.⁴ An illustration or two may possibly sufficiently explain the principle. The legislature, with the utmost propriety, may provide for a court of claims or a state board of audit, whose adjudications against the state shall be final upon it; and may direct that the amounts awarded shall go into the general levy for the year. Here is a rule to be properly worked out by a proper agency. A like provision

¹ *Schultes v. Eberly*, 82 Ala. 242; *Reelfoot Lake Levee Dist. v. Dawson*, 97 Tenn. 151.

² The legislative branch of the government has the exclusive power of taxation, except as far as the power is restrained by the constitution, or delegated by the legislature or the constitution to local municipalities: *Security Co. v. Hinton*, 97 Cal. 214.

³ *State v. Des Moines*, 103 Iowa 76.

⁴ *McCabe v. Carpenter*, 102 Cal. 469. A statute imposing on the circuit judge the duty of levying a tax in the event of the failure of the county officials to act, is unconstitutional as conferring legislative power upon a strictly judicial tribunal: *Fleming v. Dyer* (Ky.), 47 S. W. Rep. 444; citing *Pennington v. Woolfolk*, 79 Ky. 13, and *Muhlenburg County v. Morehead* (Ky.), 46 S. W. Rep. 484.

for the adjustment of claims against counties, cities, and townships may also be made. A fund for contingent expenses may be put at the disposal of the executive or of other state officers, to be used for public purposes not previously enumerated in detail by the legislature. But to leave to a court of claims or any state officer or board the power to determine whether a tax should be laid for the current year, or at what rate, or upon what property, or how it should be collected, and whether lands should be sold or forfeited for its satisfaction,—all this prescribes no rule, and originates no authority; it merely attempts to empower some other tribunal to prescribe a rule and set in motion the tax machinery. And this is clearly incompetent.¹ The legislature must make the law, but it may prescribe its own regulations regarding the ministerial agents that are to execute it.²

There is, nevertheless, one clearly defined exception to the rule that the legislature shall not delegate any portion of its authority. The exception, however, is strictly in harmony with the general features of our political system, and it rests upon an implication of popular assent which is conclusive. This exception relates to the case of municipal corporations. Immemorial custom, which tacitly or expressly has been incorporated in the several state constitutions, has made these organizations a necessary part of the general machinery of state government, and they are allowed large authority in matters of local government, and to a considerable extent are permitted to make the local laws. This indulgence has been carried into matters of taxation; the state in very many cases doing little beyond prescribing rules of limitation within which for local purposes the local authorities may levy taxes; but with full reserved power, nevertheless, to limit or recall the delegation at pleasure.³

¹ *Inhabitants v. Allen*, 61 N. J. L. 228.

² It is not a delegation of the taxing power where the legislature provides for the readjustment and reapportionment of unpaid back taxes through the agency of a city board of assessors: *Tyrrell v. Wheeler*, 123 N. Y. 76. A statute exempting cer-

tain manufacturing establishments from taxation for a term of years, if the town so votes, is not a delegation of legislative power, but a permission to the town to avail itself of the privileges of the statute: *Colton v. Montpelier*, 71 Vt. 413.

³ *Caldwell v. Justices*, 4 Jones Eq. 323; *Taylor v. Newbern*, 2 Jones Eq.

The legislature, however, in thus making delegation of the power to tax, must make it to the corporation itself, and provide for its exercise by the proper legislative authority of the corporation. It cannot confer upon merely ministerial or ad-

141; *Thompson v. Floyd*, 2 Jones Law 313; *Wingate v. Sluder*, 6 Jones Law 552; *Com'rs v. Patterson*, 8 Jones Law 182; *Wilmington v. Roby*, 8 Ired. 250; *Steward v. Jefferson*, 3 Harr. 335; *Lockhart v. Harrington*, 1 Hawks 408; *Cheaney v. Hooser*, 9 B. Monr. 330; *Slack v. Railroad Co.*, 13 B. Monr. 1, 9; *Battle v. Mobile*, 9 Ala. 234; *Stein v. Mobile*, 24 Ala. 591; *Osborne v. Mobile*, 44 Ala. 493; *Schultes v. Eberly*, 82 Ala. 242; *Harrison v. Vicksburg*, 3 S. & M. 581; *Smith v. Aberdeen*, 25 Miss. 458; *Hope v. Deaderick*, 8 Humph. 1; *Trigally v. Memphis*, 6 Cold. 382; *Bull v. Read*, 13 Grat. 78; *Case of County Levy*, 5 Call. 139; *Kuhn v. Board of Education*, 4 W. Va. 499; *Logansport v. Seybold*, 59 Ind. 225; *People v. Kelsey*, 34 Cal. 470; *Washington v. State*, 13 Ark. 752; *Baker v. State*, 44 Ark. 134; *Little Rock v. Prather*, 46 Ark. 471; *State v. Noyes*, 10 Fost. 279, 292; *Burgess v. Pue*, 2 Gill 11; *Alexander v. Baltimore*, 5 Gill 383; *Kinney v. Zimpleman*, 36 Tex. 554; *St. Louis v. Laughlin*, 49 Mo. 559; *St. Louis v. Savings Bank*, 49 Mo. 574; *People v. Hurlburt*, 24 Mich. 44, 108; *Butler's Appeal*, 73 Pa. St. 448; *Baldwin v. City Council*, 53 Ala. 427; *Slack v. Ray*, 26 La. An. 674; *New Orleans v. Kaufman*, 29 La. An. 283; *Mayor, etc. v. White*, 46 La. An. 449; *Mandeville v. Beaudot*, 49 La. An. 236; *Chicago, St. L. & N. O. R. Co. v. Kentwood*, 49 La. An. 931; *State v. Leffingwell*, 54 Mo. 458; *Canova v. Williams*, 41 Fla. 509; *Oconto City Water Supply Co. v. Oconto*, 105 Wis. 76. Unless forbidden by the constitution the legislature may confer the taxing power on municipalities in such measure as it deems expedient, to the same extent as the state possesses: *Colton v. Montpelier*, 71 Vt. 413. It is for the legislature to determine the extent to which it will confer upon any municipal corporation the power of taxation to aid it in the discharge of the obligations imposed by the constitution upon itself: *Chico High School Board v. Board of Supervisors*, 118 Cal. 115. The legislative power to impose a license tax on occupations, whether for regulation or for purposes of revenue, may be delegated to municipal corporations: *In re Martin* (Kan.), 64 Pac. Rep. 43, and cases cited. A legislature which itself has power to impose a poll tax may authorize a municipality to impose one: *Perry v. Rockdale*, 62 Tex. 451. The power of the legislature to delegate to county boards the authority to tax was denied in the early case of *Marr v. Enloe*, 1 Yerg. 452, but in the subsequent case of *Hope v. Deaderick*, 8 Humph. 1, the right to empower local bodies to levy local taxes was fully sustained. In Nebraska the legislature may confer upon counties the power to make local improvements by special assessment or taxation of property benefited: *Dorst v. Griffin*, 31 Neb. 668; *Dodge County v. Acom* (Neb.), 85 N. W. Rep. 292. A statute conferring on county supervisors power to license all legal business carried on in the county—for example, sheep raising—was sustained. *El Dorado County v. Meiss*, 100 Cal. 268. Where the state constitution prescribes the objects for which the taxing power may be delegated to counties, it may not be granted or exerted for other purposes: *Jones v. Sligh*, 75 Ga. 7; *Adair v. Ellis*, 83 Ga. 464. A

ministrative officers the power to make rules for taxation; and if such officers are given authority to levy and collect taxes, it must be under rules laid down for them.¹ Neither can the legislature confer upon private corporations the power to tax, though it may doubtless create municipal corporations for that especial purpose when not forbidden by the state constitution to do so. In some states this is forbidden.²

constitutional provision that the corporate authorities of cities may be vested with power to assess and collect taxes requires a legislative enactment to make it effectual: *State v. Kelly*, 45 S. C. 659. In authorizing freeholders' charters which the legislature cannot change or amend, the power of taxation, being essential to municipal existence, is necessarily implied: *Security, etc. Co. v. Hinton*, 97 Cal. 214. The delegation by statute to proper city authorities to make annual assessments in addition to triennial ones, is not unconstitutional: *Jermyn v. Fowler*, 186 Pa. St. 595. An exemption from taxation is an exemption "by the laws of the state," whether effected by direct vote of the legislature or by the vote of a city to which authority had been delegated: *Richardson v. St. Albans (Vt.)*, 47 Atl. Rep. 100.

¹ A statute delegating to the county superintendent of schools power to levy such tax for high-school purposes as he may deem desirable without control by the inhabitants or any local board, is illegal: *McCabe v. Carpenter*, 102 Cal. 469. A statute providing for a levy of taxes for high-school purposes was held not unconstitutional as conferring legislative power on the high-school board, where it merely provided that such board should furnish estimates of cost to the board of supervisors, leaving discretion with the latter: *People v. Lodi High School Dist.*, 124 Cal. 694. Where the whole business of deciding on the improvement and

assessing the benefits remains with the city authorities, a statute is not invalid as delegating the city's taxing powers to holders of bonds issued upon property benefited: *Germond v. Tacoma*, 6 Wash. 365. A statute empowering boards of library trustees appointed by mayors and councils to fix a rate of taxation for the maintenance of a library fund, is unconstitutional, being a delegation of the taxing power to municipal boards not elected by the people: *State v. Des Moines*, 103 Iowa 76.

² See *Cypress Pond Draining Co. v. Hooper*, 2 Met. (Ky.) 350; *State v. Smith*, 50 N. J. L. 101. The contrary seems to be assumed in *Anderson v. Kerns Draining Co.*, 14 Ind. 199, and *Drainage Co. Case*, 11 La. An. 338.

³ Under the constitution of Alabama the legislature cannot delegate the power of taxation to any corporation not municipal; and as a school district created by statute with appointive, not elective, trustees, is not a municipal corporation, although it is a *quasi*-public one, an act attempting to delegate the power to such trustees is invalid: *Schultes v. Eberly*, 82 Ala. 242. The constitution of Arkansas, which provides that the legislature may delegate the taxing power to the state's subordinate political and municipal corporations, but no farther, does not prohibit the delegation of such power to a levee board: *Davis v. Gaines*, 48 Ark. 370; *Keel v. Board of Directors*, 59 Ark. 513. In Illinois it was held that a corporation created to construct levees along a river for the benefit of its

In delegating the authority, the state is not limited to the exact measure of that which is exercised by itself, but it may permit the municipalities to tax subjects which for reasons of public policy it has not been deemed wise to tax for more general purposes. It is not uncommon, therefore, to find cities and villages empowered by law to tax trades and occupations

members could not be given the power to assess the cost on the lands of those who receive the benefit: *Board of Directors v. Houston*, 71 Ill. 318. The irrigation districts contemplated by the statute of California are *quasi*-public corporations in the sense that their organization is for the general public benefit, and the power of assessment may be delegated to them: *Irrigation Dist. v. Williams*, 76 Cal. 360. The power to assess city property for local improvements may constitutionally be delegated by the legislature to a board of assessors, acting independently of the common council: *Little Rock v. Board of Improvements*, 42 Ark. 152. Under the constitution of Georgia authorizing the granting of the power of taxation to county authorities or municipal corporations, that power may be given to a county board of education: *Smith v. Bohler*, 72 Ga. 546. A statute giving the board of county commissioners power to assess and collect town taxes is valid; they are "corporate authorities" for the town: *People v. Knopf*, 171 Ill. 191; *Bebb v. People*, 172 Ill. 376. The officers of a city may be invested by the legislature with power to levy and collect taxes for the support of the common schools: *Fuller v. Heath*, 89 Ill. 296. A statute authorizing the park board of a city to determine the amount of tax to be levied in the city for park purposes was held valid even though such board was an appointive body: *State v. West Duluth Land Co.*, 75 Minn. 456. In New Jersey the power of taxation cannot be delegated except to the local

municipal bodies; and a statute is invalid in so far as it attempts to confer power upon commissioners appointed by the governor to levy taxes for local government purposes: *Inhabitants v. Allen*, 61 N. J. L. 228. A constitutional provision authorizing the legislature to vest "the corporate authorities of cities, towns, and villages with power to make local improvements by special assessments or by special taxation of property benefited," does not impliedly prohibit the granting of such power to other corporations so as to invalidate a statute authorizing a part of a county to form a dyking district, and to establish a system of dykes by a special assessment of the property benefited: *Hansen v. Hammer*, 15 Wash. 315. An act authorizing the creation of a board of road commissioners, and empowering them to levy taxes for the improvement of the road, was held unconstitutional in Kansas: *Board v. Abbott*, 52 Kan. 148; *Hovey v. Board of Com'rs*, 56 Kan. 577; *Parks v. Board of Com'rs*, 61 Fed. Rep. 436; *First Nat. Bank v. Board of Com'rs*, 16 C. C. A. 56. Where the constitution vests the power of taxation for municipal purposes in municipal corporations under the authority of the legislature, a statute empowering a board of commissioners to fix a license tax part of which is to be paid into the city treasury, is invalid: *State v. Ashbrook*, 154 Mo. 375. In Tennessee the taxing power can be delegated only to counties and incorporated towns: *Waterhouse v. Public Schools*, 8 Heisk. 857.

which the state, for its purposes, abstains from taxing.¹ Where one section of a state constitution empowered the legislature to tax certain named occupations, while another empowered it to authorize corporate authorities of cities, etc., to assess and collect taxes, it was held that the legislature was not restricted, in delegating power, to the imposition of the taxes enumerated in the former section.²

What is true of the state is equally true of the municipalities; that the power they possess to tax must be exercised by the corporation itself and cannot be delegated to its officers or other agencies. This rule applies to whatever is to be done which is legislative in its nature and involves the exercise of discretion, and a city, therefore, cannot delegate to an administrative officer the plan and extent of a municipal improvement for which it orders a tax,³ and if it should assume to do so, mere acts in affirmance afterwards would not supply to the officer the want of authority.⁴ Nor can the city council dele-

¹ *Montgomery v. Knox*, 64 Ala. 463; *Canova v. Williams*, 41 Fla. 509; *Johnston v. Macon*, 62 Ga. 645. "When the legislature confers upon a municipality the general power of taxation, it grants all the powers possessed by itself in respect to the imposition of taxes: and a city can then impose taxes in its discretion upon all subjects within its jurisdiction, not withheld from taxation by the legislature, whether they are taxed by the state or not:" *Norfolk v. Norfolk Landmark Pub. Co.*, 95 Va. 564. Also in Virginia it has been held that as the state refrains from taxing for state purposes the capital employed by merchants in their business, the county cannot tax it for county purposes: *Board of Supervisors v. Talant*, 96 Va. 723. A statute empowering a city to levy privilege taxes confers only the power to tax such privileges as have been taxed previously by the legislature, or such as may afterwards be ordered to be taxed by that body: *International Trading Stamp Co. v. Memphis*, 101 Tenn. 181. In Louisiana, under a

constitutional provision that "no political corporation shall impose a greater license tax than is imposed by the general assembly for state purposes," the failure of the state to impose any license tax is held to be an implied prohibition to all municipal corporations levying such a tax: *New Orleans v. Graves*, 34 La. An. 890. That special powers conferred in Illinois upon towns to charge license fees are valid, though the like licenses are not allowed by the general laws of the state, see *Woodward v. Turnbull*, 3 Scam. 1; *Ottawa v. La Salle*, 12 Ill. 339; *Byers v. Olney*, 16 Ill. 35. Further on this subject see *post*, ch. XVIII.

² *York v. Chicago, B. & Q. R. Co.*, 56 Neb. 572, citing *Magneau v. French*, 30 Neb. 843; *Templeton v. Tekamah*, 32 Neb. 542.

³ *Thompson v. Schermerhorn*, 6 N. Y. 92; *St. Louis v. Clemens*, 52 Mo. 133; *People v. Clark*, 47 Cal. 456; *Johnston v. Macon*, 62 Ga. 645; *Hyde v. Joyes*, 4 Bush 464.

⁴ *Hyde v. Joyes*, 4 Bush 464. And see *Randolph v. Gawley*, 47 Cal. 458;

gate to a committee of its members the power to determine when sidewalks shall be required,¹ nor refer to commissioners the question what portion of the expense of an improvement shall be assessed on the owners of premises benefited, when the charter requires this to be determined by the council itself.² Boards of supervisors cannot refer to committees the power of examining the assessment rolls and equalizing the valuations, but these duties must be performed by the boards as such, though, after changes are determined upon, the act of making them is merely clerical.³ And where by law a school district is empowered at its annual meeting to vote a precise and definite sum as a tax upon the people, the meeting cannot delegate to the trustees a discretionary power as to the amount

State v. Saalman, 37 N. J. L. 156; *State v. Koster*, 38 N. J. 308; *Waterhouse v. Public Schools*, 8 Heisk. 857; *Westport v. Mastin*, 62 Mo. App. 647.

¹*Macon v. Patty*, 57 Miss. 378; *Bryan v. Chicago*, 60 Ill. 507. See *Davis v. Read*, 65 N. Y. 566. But it is no delegation of power when a board is commanded to levy a certain percentage on the tax for delinquency in payment: *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12. And in Kentucky it has been held to be no delegation of the taxing power to refer to the city engineer and a committee of the council to determine when repairs in a street improvement are needed, and how much of the old improvement can be used in making them: *Covington v. Boyle*, 6 Bush 204. Where the paving to be done during the year has been let by the foot, an ordinance directing the sidewalks to be paved at the cost of abutting lots, leaving subordinates to measure the work and apportion the tax, is not a delegation of legislative power: *Walker v. District of Columbia*, 6 Mackey 352. And where the city council fixed the rate of the levy for curbing streets, and the clerk, by the council's direction, merely computed the amount of assessment

at that rate on the lots liable therefor, there was no improper delegation of power to the clerk: *Topeka v. Gage*, 44 Kan. 87.

²*Scofield v. Lansing*, 17 Mich. 437. The council must fix the amount chargeable to the several property owners in assessing the cost of a street improvement, and cannot leave the matter to the clerk: *Barker v. Southern Const. Co. (Ky.)*, 47 S. W. Rep. 608. A city cannot delegate to its ministerial officers the power to tax, though they may be authorized, under general regulations, to issue license when the taxes are paid. See *East St. Louis v. Wehrung*, 46 Ill. 392. The following cases have discussed to some extent what constitutes a delegation of the power to tax: *State v. Sickles*, 24 N. J. L. 125; *Meuser v. Risdon*, 36 Cal. 139; *State v. Ashbrook*, 154 Mo. 375; *Brooklyn v. Breslin*, 57 N. Y. 591; *McInerny v. Reed*, 23 Iowa 410; *Ould v. Richmond*, 23 Grat. 464; *Foss v. Chicago*, 56 Ill. 354; *Kuehner v. Freeport*, 143 Ill. 92; *Warren v. Grand Haven*, 30 Mich. 24; *Johnson v. Sanderson*, 34 Vt. 94; *Soule v. Seattle*, 6 Wash. 315. The subject was largely considered in *Houghton v. Austin*, 47 Cal. 646.

³*Bellinger v. Gray*, 51 N. Y. 610. See *People v. Lohnas*, 54 Hun 604.

of the tax to be levied.¹ These cases amply illustrate an important general principle.

Restriction or relinquishment of the power by contract.

In some cases the state legislature is found to have pledged the state, in definite and formal manner, that on some particular subject of taxation the state should refrain, either wholly or for some definite period, from levying any taxes whatever, or should levy them only to a certain extent. Such pledges are commonly impolitic and unwise, and it is always among the possibilities that, if sustained, they might be carried to the extreme of crippling the sovereign power of the state to perform its accustomed functions. There has always, therefore, been a strong protest against the doctrine that such pledges could constitutionally be made; the protestants insisting that no legislature is competent to limit the power of its successor, but must transmit to those to come after it the complete power which it received from its predecessor. But the federal supreme court in an early case, in which the facts were that a state had exchanged lands with an Indian tribe, and stipulated by legislative act that those conveyed to the Indians should not thereafter be subject to any tax, decided that this stipulation was binding upon the state as a contract; that the state could not impose taxes in contravention of the stipulation, and that the exemption was available on behalf of those who subsequently by legislative permission became purchasers from the Indians.² The contract derived its character of inviola-

¹ Robinson v. Dodge, 18 Johns. 351; Trumbull v. White, 5 Hill, 46. See, further, San Francisco, etc. Co. v. State Board, 60 Cal. 12.

² New Jersey v. Wilson, 7 Cranch 164. Compare Armstrong v. Athens County, 16 Pet. 281. See, for peculiar cases, Louisiana v. Pillsbury, 105 U. S. 278; Palmes v. Louisville, etc. Co., 19 Fla. 231, 109 U. S. 244; Chicago, B. & Q. R. Co. v. Guffey, 122 U. S. 561; Barnes v. Kornegay, 62 Fed. Rep. 671; Wells v. Savannah, 107 Ga. 1; Elizabeth, etc. R. Co. v. Trustees, 12 Bush 233; State v. Northern Central R. Co., 44 Md. 131; Wilmington & W. R. Co. v. Alsbrook, 110 N. C. 137; Hand v. Savannah, etc. Co., 17 S. C. 219; State v. Bank of Commerce, 95 Tenn. 221. That a license is not a contract or grant, but a mere permit or police regulation, which does not, generally speaking, prevent the state from requiring the licensee to pay tax, see Moore v. Indianapolis, 120 Md. 483; State v. Gerhardt, 145 Ind. 439; Commonwealth v. Brennan, 103 Mass. 70; Board of Excise v. Barry, 34 N. Y. 657; Ex parte Williams, 31 Tex. Crim. App. 262; Kresser v. Lyman, 74 Fed. Rep. 765. And see also *post*, ch. XIX.

bility from the clause of the constitution of the United States inhibiting the states from passing any law impairing the obligation of contracts; a clause which applies to the contracts of a state equally with those of individuals.¹

The pledge, however, in order to constitute a contract, must have the elements of a contract, and the vital elements are consent and consideration. Consent to the exemption on the part of the state is never by itself sufficient; but there must be something received by the state for the relinquishment, or something surrendered on the other side which can be deemed a legal equivalent. In the case first referred to the consideration was manifest; the state was bargaining away its lands, and was presenting the exemption from taxation as an inducement for better terms on the other side. So if the legislature by law, in order to secure the establishment of a charitable institution, charter a corporation, and in the charter declare that its property shall be exempt from taxation, and individuals, in reliance thereon, invest their means to secure the accomplishment of the object of the law, a consideration for the state's promise is thus made out.² The case would be still plainer if the state received a bonus or other valuable consideration for the grant of a franchise, stipulating in the grant to give exemption from taxation,³ or if it made the

¹ *New Jersey v. Wilson*, 7 Cranch 164; *Dartmouth College v. Woodward*, 4 Wheat. 518; *Hall v. Wisconsin*, 103 U. S. 5; *University v. People*, 99 U. S. 309; *Antoni v. Greenhow*, 107 U. S. 769. See *Stone v. Mississippi*, 101 U. S. 814. Where a contract is valid at the time by the laws of the state it is not competent to pass an act impairing its obligations, nor can any decision of the courts of the state have that effect: *Chicago v. Sheldon*, 9 Wall. 50.

² *Home of the Friendless v. Rouse*, 8 Wall. 430. The court in this case said that no consideration was necessary beyond the benefits to the community which it was to be assumed were to be anticipated from the formation of the corporation to accomplish the purpose in view. See,

also, *Ohio Trust Co. v. Debolt*, 16 How. 416.

³ *Gordon v. Appeal Tax Court*, 3 How. 133; *Farrington v. Tennessee*, 95 U. S. 679; *Tennessee v. Bank of Commerce*, 53 Fed. Rep. 735; *State v. Union, etc. Bank*, 91 Tenn. 546; *Wendover v. Lexington*, 15 B. Monr. 258; *Hennepin County v. St. Paul, M. etc. R. Co.*, 33 Minn. 534. An accepted ordinance granting to a street railway company the privilege of using a street, and requiring it to pave and keep in good repair a certain width of street, constitutes a valid contract exempting the company from assessment for improving such street: *Chicago v. Sheldon*, 9 Wall. 50; *Parmelee v. Chicago*, 60 Ill. 267; *Billings v. Chicago*, 167 Ill. 337; *West Chicago St. R. Co. v. Chi-*

grant to a corporation on a surrender by it of valuable rights.¹

The contract of exemption may either be perpetual or lim-

cago, 178 Ill. 339. But a city which has granted to a railroad company the privilege of using a street for its tracks may by special tax make necessary improvements therein, although the company has agreed to make the street safe for crossing vehicles: *Chicago, B. & Q. R. Co. v. Quincy*, 139 Ill. 355. A city ordinance allowing an elevated railroad company to construct its track over a street, and providing that it shall restore the pavements, etc., in case they are disturbed in the construction of the road, to as good a condition as they were before the disturbance, is not a contract exempting the company's rights and franchise from special taxes for improvement of the street above which the road is built: *Lake Street E. R. Co. v. Chicago*, 183 Ill. 75. An ordinance authorizing a street railway company to change its motive power, and to operate its railway by electricity for a certain period, with the right to collect fares at certain rates, with the duty of keeping in repair the street between the tracks and for two feet on each side, did not thereby exempt the company from paying on its cars a license tax which the city was by law authorized to impose, and hence a subsequent ordinance imposing such license was not void as impairing the obligations of a contract: *Springfield v. Smith*, 138 Mo. 645. A provision in a city's charter that when a street has once been improved under the charter such street shall not again be improved at the expense of the adjoining property owners, but may be repaired, does not constitute a contract between such an owner and the public that his property shall ever there-

after be exempt from special assessment: *Ladd v. Portland*, 32 Or. 271. So a statute declaring that it should be lawful for a city council, on the application of three-fourths of the owners of property in any street, to order the street to be graded, etc., and that after such grading, etc., then the city shall take charge of and keep the street in repair without any further assessment, did not constitute a contract that the expense of keeping the street in repair should thereafter be borne by the public: *Agens v. Mayor, etc.*, 35 N. J. L. 168. See *Bradley v. McAtee*, 7 Bush 667. It has, however, been held that an ordinance providing that thereafter no abatement of city taxes should be allowed because of a lot's fronting on a street paved at the expense of the abutting owners, does not affect the vested rights of one who owned a lot abutting on a street paved under ordinances imposing the cost in the first instance upon the abutting lots, but providing that there should be an abatement of city taxes on such lots: *Erie v. Griswold*, 184 Pa. St. 435.

¹ *Lucas v. Lottery Com'rs*, 11 G. & J. 490. That the franchise to set up a lottery is not a contract, see *Moore v. State*, 48 Miss. 147; *Stone v. Mississippi*, 101 U. S. 814. But see, also, *Broadbent v. Tuscaloosa, etc. Assoc.*, 45 Ala. 170. The grant of a franchise in the charter of a gas company does not imply a contract exempting the company from taxation, and a subsequent statute imposing a license tax on the privilege so granted is not invalid as impairing the obligation of a contract: *Memphis Gaslight Co. v. Taxing Dist.*, 109 U. S. 398. A statute granting to a Masonic organ-

ited to a defined period,¹ and it may be for the taxes generally, or only for some portion of them, or it may be a limitation of the tax within some specified bounds.² The same principles apply in each case. Where a certain sum is specified for a certain percentage upon valuation, or upon receipts or acquisitions in any form, this is in the nature of a commutation of taxes, the state agreeing that the sum named is, under the circumstances, a fair equivalent for what the customary taxes would be, or the fair proportion which the person bargained with ought to pay, and the power thus to commute, though liable to abuse, is undoubted.³ And this rule applies when a bonus is paid for complete future exemption, to the same ex-

ization long previously chartered an exemption from taxation on property recently purchased by it so long as it should be occupied as the lodge of the organization, does not constitute an irrepealable contract between the state and the organization: *Grand Lodge v. New Orleans*, 46 La. An. 717.

¹ An act exempting the stock of a railroad company and its real estate from taxation for thirty-six years was sustained as a contract, in *Tomlinson v. Branch*, 15 Wall. 460; as was a perpetual exemption in *Humphrey v. Pegues*, 16 Wall. 244. See, also, *Pacific R. Co. v. Maguire*, 20 Wall. 36; *Louisville, etc. Co. v. Gaines*, 3 Fed. Rep. 266; *Southern Pac. R. Co. v. Laclede*, 57 Mo. 147; *Yazoo & M. V. R. Co. v. Board of Levee Com'rs*, 37 Fed. Rep. 24. An exemption from taxation for ten years, of lands which had been donated to the state for reclamation, was held not subject to repeal after the lands had been sold: *McGee v. Mathis*, 4 Wall. 143. See this case for the construction of such an exemption. Also *Railroad Co. v. Loftin*, 105 U. S. 258. An act exempting a railroad company from taxation until its net earnings equal six per cent. of the amount invested, constitutes, when stock has been sold and

the road built on the faith of it, a contract between the state and the company which cannot be impaired by subsequent legislation: *Commonwealth v. Philadelphia & E. R. Co.*, 164 Pa. St. 252.

² *Dodge v. Woolsey*, 18 How. 331; *Ohio Trust Co. v. Debolt*, 16 How. 416.

³ The federal decisions are very full on this subject. See *Piqua Bank v. Knoop*, 16 How. 369; *Dodge v. Woolsey*, 18 How. 331; *Mechanics' Bank v. Debolt*, 18 How. 380; *Mechanics' Bank v. Thomas*, 18 How. 384; *Jefferson Bank v. Skelly*, 1 Black 436; *Franklin Bank v. State*, 1 Black 474; *Wright v. Sill*, 2 Black 544; *Dela-ware Railroad Tax*, 18 Wall. 206; *Stearns v. Minnesota*, 179 U. S. 223. These decisions are of course conclusive, but the same principle has been declared by the state courts in many cases. See, among others, *Gardner v. State*, 21 N. J. L. 557; *United, etc. Co. v. Commissioner*, 37 N. J. L. 240; *State v. Morris*, 49 N. J. L. 836; *State Lottery v. New Orleans*, 24 La. An. 86; *Leroy v. Railroad Co.*, 18 Mich. 233; *Detroit v. Detroit City R. Co.*, 76 Mich. 421; *State Bank v. People*, 5 Ill. 303; *St. Louis v. Savings Bank*, 49 Mo. 574; *Farmers' Bank v. Commonwealth*, 6 Bush 127; *Mobile v. Insurance Co.*, 53 Ala. 570.

tent and on the same reasons as when the commutation is for an annual payment.¹

It is perfectly well settled, however, that an exemption granted from motives of state policy merely, and where the state and the citizen do not meet on a basis of bargain and consideration, is to be deemed expressive only of the present will of the state on the subject; and the law granting it, like laws in general, is subject to modification or repeal in the legislative discretion,² and it is immaterial that while it continued in force persons have acted in reliance upon it.³ It is also well

¹ *Gordon v. Appeal Tax Court*, 3 How. 133; *State Bank v. Bank of Smyrna*, 2 Houst. 99.

² *Tucker v. Ferguson*, 22 Wall. 527. See *West Wis. R. Co. v. Supervisors*, 93 U. S. 595; *New Jersey v. Yard*, 95 U. S. 104; *Hoge v. Railroad Co.*, 99 U. S. 348; *Asylum v. New Orleans*, 105 U. S. 362; *Parmley v. Railroad Cos.*, 3 Dill. 25; *County Com'rs v. Woodstock Iron Co.*, 82 Ala. 153; *Central R. Co. v. State*, 54 Ga. 401; *State v. Georgia R. Co.*, 54 Ga. 423; *Goldsmith v. Georgia R. Co.*, 62 Ga. 485; *State v. Dexter, etc. R. Co.*, 69 Me. 44; *State v. Baltimore, etc. R. Co.*, 48 Md. 49; *Robertson v. Land Com'rs*, 44 Mich. 274; *State v. Newark*, 50 N. J. L. 66; *Wilmington & W. R. Co. v. Alsbrook*, 110 N. C. 137. A statute exempting from taxation a previously chartered hospital was held to give a mere privilege revocable at pleasure, and not to constitute a contract binding upon future legislatures, being without consideration: *Christ's Church v. Philadelphia*, 24 How. 300; *Philadelphia v. Contributors*, 134 Pa. St. 171. See *Grand Lodge v. New Orleans*, 44 La. An. 659, 166 U. S. 143. A legislative act providing that companies formed for boring for and manufacturing salt in the state should be exempt from taxation, was held to be a mere bounty law, dependent for its continuance upon the dictates of public policy, and the voluntary good

faith of the legislature: *East Saginaw Salt Manuf. Co. v. East Saginaw*, 19 Mich. 259, 13 Wall. 373. And see *Welch v. Cook*, 97 U. S. 541; *County Com'rs v. Woodstock Iron Co.*, 82 Ala. 151; *Detroit v. Plankroad Co.*, 43 Mich. 140. A statute exempting from taxation city water-works so long as they shall be unproductive, does not give a contract of exemption so as to prevent a repeal; and the fact that no tax was levied upon the water-works at the time water-works bonds were issued by the city, does not prevent the state from taxing the property in subsequent years: *Newport v. Commonwealth (Ky.)*, 50 S. W. Rep. 845. A statute which simply enacts that provisions for the taxation of railroads shall not apply to certain railroads, does not create a contract, but is a mere gratuity subject to repeal by the legislature: *Manistee & N. E. R. Co. v. Railroad Com'r*, 118 Mich. 349. And it makes no difference that the exemption conferred by such a statute is without limit as to time: *Ibid.* If a legislature, in extending a city's boundaries, provides that the lands annexed shall be taxed only at a certain rate, this is no contract and may be repealed: *Washburn v. Oshkosh*, 60 Wis. 453.

³ An exemption from taxation of the property of members of the national guard may be repealed even as to one who enlists while it is in

settled that the contract must be clearly made out. The power to tax being essential to the very existence of the state, there can be no presumption that it has been either abandoned or restricted, and whoever claims that it has been should be able to show by clear words that an intent is expressed to do so, and that consideration existed therefor. And when thus the contract is made out, it cannot be extended by implication beyond the fair import of its terms.¹ As has been said by the

force and who is in service at the time of the repeal: *People v. Assessors*, 84 N. Y. 610. Gifts made to an incorporated hospital upon the faith of its exemption from taxation do not constitute a consideration for such exemption, since the donors must be presumed to have known that the legislature had power to repeal the exempting act: *Philadelphia v. Contributors*, 134 Pa. St. 171. Where a statute imposed a certain rate of taxation on insurance companies then in existence or thereafter to be formed, it was held that the rate might be increased as to companies subsequently formed: *Holly Springs, etc. Ins. Co. v. Marshall County*, 52 Miss. 281.

¹ *Providence Bank v. Billings*, 4 Pet. 514; *Armstrong v. Athens County*, 16 Pet. 281; *Philadelphia, etc. R. Co. v. Maryland*, 10 How. 376; *Gilman v. Cheboygan*, 2 Black 510; *Minot v. Philadelphia, etc. R. Co.*, 18 Wall. 206; *North Mo. R. Co. v. Maguire*, 20 Wall. 46; *Erie R. v. Pennsylvania*, 21 Wall. 497; *Tucker v. Ferguson*, 22 Wall. 527; *Farrington v. Tennessee*, 95 U. S. 686; *Memphis Gas-Light Co. v. Shelby County Taxing Dist.*, 109 U. S. 398; *Southwestern R. Co. v. Wright*, 116 U. S. 231; *Vicksburg, S. & P. R. Co. v. Dennis*, 116 U. S. 665; *Tennessee v. Whitworth*, 117 U. S. 136; *New Orleans City & L. R. Co. v. New Orleans*, 143 U. S. 192; *Keokuk, etc. R. Co. v. Missouri*, 152 U. S. 301; *Stone v. Bank of Commerce*, 174 U. S. 412; *Louisville v.*

Bank of Louisville, 174 U. S. 439; *Stein v. Mobile*, 17 Ala. 234; *Smith v. Macon*, 20 Ark. 17; *Oliver v. Memphis, etc. R. Co.*, 30 Ark. 128; *Brainard v. Colchester*, 31 Conn. 407; *Lord v. Litchfield*, 36 Conn. 116; *Macon v. Central R. Co. etc. Co.*, 50 Ga. 620; *Bradley v. McAtee*, 7 Bush 167; *Wendover v. Lexington*, 15 B. Monr. 258; *New Orleans City & L. R. Co. v. New Orleans*, 40 La. An. 587; *Baltimore, C. & A. R. Co. v. Ocean City*, 89 Md. 89; *Stetson v. Bangor*, 56 Me. 274; *Portland, etc. R. Co. v. Saco*, 60 Me. 196; *Auburn v. Young Men's Christian Assoc.*, 86 Me. 244; *Mayor, etc. v. Grand Lodge*, 60 Md. 280; *Commonwealth v. Bird*, 12 Mass. 443; *North Mo. R. Co. v. Maguire*, 49 Mo. 17; *Pacific R. Co. v. Cass County*, 53 Mo. 17; *Sloan v. Pacific R. Co.*, 61 Mo. 24; *Springfield v. Smith*, 138 Mo. 645; *Dale v. Governor*, 3 Stew. 387; *Bridge Proprietors v. State*, 21 N. J. L. 384, 22 N. J. L. 593; *People v. Roper*, 35 N. Y. 628; *People v. Lawrence*, 41 N. Y. 137; *People v. Com'rs*, 47 N. Y. 501; *Easton Bank v. Commonwealth*, 10 Pa. St. 442; *Academy v. Philadelphia*, 22 Pa. St. 496; *Miller v. Kirkpatrick*, 29 Pa. St. 226; *Erie R. Co. v. Commonwealth*, 66 Pa. St. 84; *Jones, etc. Manuf. Co. v. Commonwealth*, 69 Pa. St. 137; *Commonwealth v. Pottsville Water Co.*, 94 Pa. St. 516; *State v. Bank of Smyrna*, 2 Houst. 99; *Memphis v. Union, etc. Bank*, 91 Tenn. 546; *Memphis v. Home Ins. Co.*, 91 Tenn. 558; *Memphis v. Memphis City Bank*, 91 Tenn.

federal supreme court, "if, on any fair construction of the legislation, there is a reasonable doubt whether the contract is made out, this doubt must be solved in favor of the state. In other words, the language used must be of such a character as, fairly interpreted, leaves no room for controversy.¹

It is, perhaps, hardly necessary to observe that an unconstitutional law cannot establish a contract; therefore any exemptions which the legislature undertakes to grant in disregard of the constitution are of no force.²

By repeated decisions of the federal supreme court it has been authoritatively and conclusively determined that the charter of a private corporation is to be regarded as a contract between the corporators on the one hand, and the state on the other,

574; *Herrick v. Randolph*, 13 Vt. 525; *Baltimore & O. R. Co. v. Marshall County*, 3 W. Va. 319.

¹ *Bailey v. Maguire*, 22 Wall. 215; *Covington v. Kentucky*, 173 U. S. 231; *Louisville v. Bank of Louisville*, 174 U. S. 439; *Moore v. Holliday*, 4 Dill. 52; *Mayor, etc. v. Grand Lodge*, 60 Md. 280; *People v. Common Council*, 76 N. Y. 20; *Ladd v. Portland*, 32 Or. 271; *Memphis v. Home Ins. Co.*, 91 Tenn. 558; *Weston v. Supervisors*, 44 Wis. 242. Naming a rate of taxation, but not expressly limiting it, does not preclude the rate's being increased or a different form of tax from being imposed: *Delaware R. Tax*, 18 Wall. 206; *Louisville R. Co. v. Louisville*, 4 Bush. 478; *Detroit R. Co. v. Guthard*, 51 Mich. 180; *Detroit v. Detroit City R. Co.*, 76 Mich. 421; *St. Louis v. Boatman's Ins. etc. Co.*, 47 Mo. 150; *State v. Parker*, 32 N. J. L. 426; *Erie R. Co. v. Commonwealth*, 66 Pa. St. 84; *Union Passenger R. Co. v. Philadelphia*, 83 Pa. St. 429. A charter exemption to a bank from taxation on its capital is not impaired by requiring the bank to pay a license tax: *State v. Citizens' Bank*, 52 La. An. 1086. A charter of a street railway company providing for an annual tax upon real estate and fixtures was held not

an implied exemption from further taxation, and the contract was not impaired by an annual franchise tax: *New Orleans City R. Co. v. New Orleans*, 143 U. S. 192.

² *Ramsay v. Hoeger*, 76 Ill. 438; *Covington v. Commonwealth (Ky.)*, 38 S. W. Rep. 836. A railroad company in accepting the provisions of an unconstitutional statute relative to taxation upon gross earnings does not acquire any contract right that such method of taxation shall not be changed: *State v. Duluth & L. R. Co.*, 77 Minn. 433. If an act unconstitutional because not taxing railroads uniformly is repealed, and a different law substituted, the fact that a railroad company has acted upon the repealed act does not establish a contract between it and the state which would preclude the substitution: *Railroad Cos. v. Gaines*, 97 U. S. 697. Where a city council enters into a contract to exempt certain property from taxation in consideration of the transfer to the city of certain other property, the fact that the city has accepted the benefits of the contract will not estop it from avoiding the same on the ground of lack of power to enter into it: *McTwiggan v. Hunter*, 18 R. L. 776.

and that whatever stipulations are contained therein, which are intended for the benefit of the corporators, and operate as an inducement to them to accept the charter, are promises by the state based on valid and sufficient consideration, and not subject to recall except with the assent of the corporation itself.¹ Stipulations respecting taxation come within the principle, and are, therefore, irrevocable and not subject to change at the mere will of the state, to the prejudice of those on whose behalf they are made.² But the right to amend or repeal may be reserved in the charter, and when it is reserved it is a part of the contract, and may be exercised by the state at pleasure,³

¹ *Dartmouth College v. Woodward*, 4 Wheat. 518; *Trustees of University v. Indiana*, 14 How. 268; *Binghamton Bridge Case*, 3 Wall. 51; *Stone v. Mississippi*, 101 U. S. 814.

² *Piqua Bank v. Knoop*, 16 How. 369; *Dodge v. Woolsey*, 18 How. 331; *Home of the Friendless v. Rouse*, 8 Wall. 430; *Washington University v. Rouse*, 8 Wall. 439; *Wilmington, etc. R. Co. v. Reid*, 13 Wall. 264; *Humphreys v. Pegues*, 16 Wall. 244; *Pacific R. Co. v. Maguire*, 20 Wall. 36; *New Jersey v. Yard*, 95 U. S. 104; *Pickard v. East Tenn., V. & G. R. Co.*, 130 U. S. 637; *Barnes v. Kornegay*, 62 Fed. Rep. 671; *Mobile & S. H. R. Co. v. Kennerly*, 74 Ala. 566; *Memphis & L. R. Co. v. Berry*, 41 Ark. 436; *Singer Manuf. Co. v. Heppenheim*, 58 N. J. L. 633; *Hancock v. Singer Manuf. Co.*, 62 N. J. L. 289; *State v. Butler*, 86 Tenn. 614; *Commonwealth v. Richmond & P. R. Co.*, 81 Va. 355. Where a right of exemption is a contract between a state and a corporation, a statute modifying it is ineffectual until accepted by the corporation: *In re Stevens County*, 36 Minn. 467. An exemption from taxation, by act of legislature, for good consideration, of property owned or to be owned by a railroad company or its successors, attaches to the property, and cannot be withdrawn, in the absence of pro-

vision for forfeiture, for failure to exercise faithfully corporate powers: *International & G. N. R. Co. v. State*, 75 Tex. 356. The perpetual exemption of the capital stock of a railroad company from taxation, by the provisions of its charter, covers the individual interests therein of the stockholders, and a subsequent law imposing a tax on the shares owned by them impairs the obligation of the contract between them and the state, and is void: *Tennessee v. Whitworth*, 117 U. S. 129. A contract obligation not to tax shares of stock beyond the amount named in the charter of a bank, was held not to apply to stock issued to depositors after the adoption of a state constitution providing for a greater rate of taxation on all property; the right named in the charter to issue the additional stock in exchange for deposits not being a valuable franchise of a contractual nature which cannot be impaired by subsequent legislation: *Bank of Tennessee v. Tennessee*, 163 U. S. 416.

³ *Baltimore & O. R. Co. v. Jefferson County*, 29 Fed. Rep. 305; *Northern Bank v. Stone*, 88 Fed. Rep. 413; *New Orleans v. Asylum*, 31 La. An. 292; *Bangor, etc. R. Co. v. Smith*, 47 Me. 34; *Commonwealth v. Fayette County R. Co.*, 55 Pa. St. 452; *West Wisconsin R. Co. v. Supervisors*, 35 Wis. 257.

unless conditions are imposed in respect to its exercise, in which case the conditions must be observed.¹ To avoid the force of the principle that a corporate charter is a contract, which oftentimes operates in some unexpected manner, and, perhaps, unjustly to the public at large, the people of some of the states have made express provision by their constitutions that all charters of private incorporation granted by the legislature shall be subject to amendment or repeal at the legislative will. A provision of this nature is a limitation upon the power of the legislature in granting charters; and while it cannot affect any that are in existence when it takes effect, it attaches the quality of modification and repealability to any afterwards granted, and all who accept them do so with full notice of the fact. The charters are still contracts, but contracts with a reserved right on the part of the state to amend or terminate them.² The rule would be the same if the charter were granted

The power to alter, amend, or repeal by vote of the people a statute exempting a railroad company from all other taxes on payment of a percentage of its gross receipts, cannot be so exercised as to continue in full the obligation as to payment of such percentage, and at the same time deny in whole or in part the exemption conferred by the contract: *Stearns v. Minnesota*, 179 U. S. 223; *Duluth & I. R. Co. v. St. Louis County*, 179 U. S. 302.

¹ See *Flint, etc. P. Co. v. Woodhull*, 25 Mich. 99.

² *Tomlinson v. Jessup*, 15 Wall. 454; *Miller v. State*, 15 Wall. 478; *Penn. Col. Cases*, 13 Wall. 190; *Holyoke Co. v. Lyman*, 15 Wall. 500; *Parmley v. Railroad Co.*, 3 Dill. 25; *Hewitt v. New York, etc. R. Co.*, 12 Blatch. 452; *State v. Miller*, 30 N. J. L. 368; *Same v. Same*, 81 N. J. L. 521; *State v. Newark*, 35 N. J. L. 157; *Commonwealth v. Fayette Co. R. Co.*, 55 Pa. St. 452; *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340; *Union Improvement Co. v. Commonwealth*, 69 Pa. St. 140; *Wagner Free Inst. v. Philadelphia*, 132 Pa. St. 612; *West Wis. R. Co. v.*

Supervisors, 35 Wis. 257; s. c. in error, 93 U. S. 595; *Atlantic, etc. R. Co. v. State*, 55 Ga. 312; *New Orleans v. Metropolitan, etc. Co.*, 27 La. An. 648; *Storrie v. Houston City St. R. Co.*, 92 Tex. 129. Although a charter exempting railroad property from taxation contain a clause reserving the right to the legislature to alter and repeal, until such right is exercised by the legislature repeal is forbidden: *Petersburg R. Co. v. Com'rs*, 81 N. C. 487. Where a charter granting to a corporation immunity from general taxation was not accepted until after the adoption of a constitution subjecting all property to taxation, and forbidding the granting of immunities, the right to the exemption was revoked by such adoption, notwithstanding subsequent legislative recognition of the corporation: *State v. Planters' F. & M. Ins. Co.*, 95 Tenn. 203; *Planters' F. & M. Ins. Co. v. Tennessee*, 161 U. S. 163. The term "corporate rights," in a statute providing that it may at any time be amended or repealed, but that such amendment or repeal shall not alter the corporate rights of companies

while a general law of the state was in force which declared that all grants of the kind should be subject to the legislative power of alteration and repeal; for the grantees would accept their franchises with notice of and qualified by such a declaration.¹

Contracts of a state, like the contracts of individuals, may be modified to any extent, subject to constitutional provisions, if any, having a bearing upon the right, by the mutual consent

formed thereunder, does not include an incidental privilege or immunity such as a special standard of taxation: *Detroit R. Co. v. Guthard*, 51 Mich. 180; *Detroit v. Detroit City R. Co.*, 76 Mich. 421. Nor is a charter immunity from taxation a "vested right" within a statute declaring that charters shall be subject to amendment or repeal, but that no amendment or repeal shall impair vested rights: *Deposit Bank v. Daviess County*, 102 Ky. 174. "Corporate powers" are not diminished by the imposition of a privilege tax, for they do not include exemption from taxation: *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684. Immunity from taxation by statute is not a franchise: *Chesapeake & O. R. Co. v. Miller*, 114 U. S. 176.

¹*Tomlinson v. Jessup*, 15 Wall. 454; *Miller v. State*, 15 Wall. 478; *Railroad Co. v. Maine*, 96 U. S. 499; *Louisville Gas Co. v. Citizens' Gaslight Co.*, 115 U. S. 683; *Louisville Water Co. v. Clark*, 143 U. S. 1; *Covington v. Kentucky*, 173 U. S. 231; *State Board v. Paterson & R. R. Co.*, 50 N. J. L. 446. Where an act containing an exemption from taxation is enacted subject to the provision of a general statute that all statutes shall be subject to amendment or repeal at the will of the legislature unless a contrary intent be plainly expressed, an intent not to repeal or amend must be so directly and unmistakably expressed as to leave no room for doubt that an irrevocable contract to ex-

empt is constituted: *Covington v. Kentucky*, 173 U. S. 231. Where, after the enactment of such general statute, an act was passed exempting from farther taxation those banks which before a certain time should consent to the tax prescribed in such act, and should waive and release all right under acts of congress or state charters to a different mode or a smaller rate of taxation, such general statute prevented the acceptance of such act from operating as an irrevocable contract for immunity from different or increased taxation: *Citizens' Savings Bank v. Owensboro*, 173 U. S. 636; *Stone v. Bank of Commerce*, 174 U. S. 412; *Louisville v. Bank of Louisville*, 174 U. S. 439; *Deposit Bank v. Daviess County*, 102 Ky. 174. A statute reserving to the legislature the right to repeal or amend "charters or privileges" granted by the legislature to particular persons, does not enable the legislature to repeal an act exempting newly constructed railroad property from taxation for a certain time, as against railroad companies which on the faith of such act constructed their roads before it was repealed: *Commonwealth v. Owensboro, etc. R. Co.*, 95 Ky. 60. But companies which began the construction of their roads after the statute exempting newly-constructed railroad property from taxation was repealed, cannot claim exemption on the ground that they did such construction work in the belief that such act was still in force: *Ibid.*

of the parties thereto; which, in the case of a charter of private incorporation, would be the state on the one side and the incorporators on the other. The state consents to the modification when it adopts legislation which will have that effect,¹ and the corporation when it accepts such legislation.²

A different rule prevails in the case of charters of municipal incorporation. These are not contracts, but regulations of government; and if they contain provisions respecting taxation, such provisions, like everything else in the charter, are subject to change, as the legislative judgment may change respecting questions of policy and expediency, or as changing circumstances may seem to require.³

The Constitution a Law. The constitution of a state is, in the strictest sense, a law: the fundamental and organic law. And the state being disabled to pass any law impairing the obligation of contracts, it can no more do so by incorporating provisions in its constitution that might have that effect, than by laws enacted by the legislature.⁴

¹ *Railroad Co. v. Com'rs*, 87 N. C. 414.

² *Macon, etc. R. Co. v. Goldsmith*, 62 Ga. 463; *Petersburgh v. Railroad Co.*, 29 Grat. 773; *State v. Com'rs, etc.*, 37 N. J. L. 240. Long acquiescence, unexplained, in the imposition of taxes, raises a presumption in favor of the surrender of the privilege of exemption: *State v. Wright*, 41 N. J. L. 478; *Given v. Wright*, 117 U. S. 648. See *Com'rs v. Simons*, 128 Ind. 193; *Wau-pe-man-qua v. Aldrich*, 28 Fed. Rep. 489. When a corporate charter is subject to legislative amendment, it may be so amended as to make stockholders personally liable for taxes: *Ander-son v. Commonwealth*, 18 Grat. 295. A provision in a charter that it might be amended or repealed, but that this should not alter corporate rights, held not to preclude a change in respect to taxation: *Detroit R. Co. v. Guthard*, 51 Mich. 180; *Detroit v. Detroit City R. Co.*, 76 Mich. 421. A contract in a charter as to taxation

is not repealed by a subsequent inconsistent constitutional provision: *University v. People*, 99 U. S. 309; *Scotland County v. Railroad Co.*, 65 Mo. 123. See *Appeal Tax Court v. Cemetery Co.*, 50 Md. 432.

³ *Dartmouth College v. Woodward*, 4 Wheat. 518; *Meriwether v. Garrett*, 103 U. S. 472; *Williamson v. New Jersey*, 130 U. S. 189; *Essex Pub. Road Board v. Shinkle*, 140 U. S. 334. There is no right, of property in the power of taxation conferred upon a municipal corporation: *State v. Will-iamson*, 46 N. J. L. 204; *Williamson v. New Jersey*, *supra*. A contract made by a water company with a city is subject, so far as the city's rights are concerned, to the will of the legislature, and a statute modifying the city's rights to tax the company does not operate as a taking of the property of the city without due process of law: *New Orleans v. New Orleans Water-Works Co.*, 142 U. S. 79.

⁴ *Dodge v. Woolsey*, 18 How. 331;

State Repudiation. The contracts of a state respecting taxation, though their obligation cannot constitutionally be impaired, may nevertheless in some cases be subject to repudiation from the impossibility of finding a remedy for its prevention. The difficulty springs from the fact that the state, as a sovereignty, is subject to suits only as it may have consented to be; and therefore, if a remedy can only be found in a suit at law or in equity, it may not be found at all, because the state may not have consented to such a suit. By the constitution of the United States, the federal judicial power, in its application to the states as political entities, is practically limited to suits between states, and to other suits in which states may be plaintiffs; it does not extend to suits brought against states by citizens of other states, or by their own citizens, or citizens or subjects of foreign states.¹ Therefore, if an individual is holder of a demand against one of the states of the Union, which for any reason it sees fit not to perform or recognize, he is entirely without remedy except as the state may furnish one by its own laws. His one state cannot, for the purpose of obtaining justice for him, take an assignment of his demand and bring suit upon it in his interest, since this would be mere evasion of a constitutional inhibition.² The consequence is, that even if a state issues securities which it expressly agrees to receive in payment for taxes, but afterwards it determines not to receive them, there is commonly no remedy. *Mandamus* will not lie to compel the state officers to receive the obligations in payment of taxes, since the suit against them would be in legal effect a suit against the state itself;³ the collector cannot be enjoined at the suit of the creditor from refusing to receive the obligations,⁴ nor is he liable in an action on the case for his refusal.⁵

Nevertheless, any legislative enactment calculated and de-

Railroad Co. v. McClure, 10 Wall. 511; Gunn v. Barry, 15 Wall. 610; White v. Hart, 13 Wall. 646; Pacific R. Co. v. Maguire, 20 Wall. 36; Marsh v. Burroughs, 1 Woods 463; Keith v. Clark, 97 U. S. 454; University v. People, 99 U. S. 309.

¹ U. S. Const., art. 3, § 2; Amendment 11.

² New Hampshire v. Louisiana, 108 U. S. 76; New York v. Louisiana, Ibid.

³ Antoni v. Greenhow, 107 U. S. 769. See Louisiana v. Jumel, 107 U. S. 711; Elliott v. Wiltz, Ibid.

⁴ Marye v. Parsons, 114 U. S. 325.

⁵ Carter v. Greenhow, 114 U. S. 317.

signed to impair the obligation of the state contract is to be treated everywhere as void in law;¹ and if the case is such that the state, through its officers, is compelled to resort to affirmative proceedings in order to give the void enactment effect, the party proceeded against may defend his rights as he might in any other case of attempted wrong. The same remedies are open to him as in other cases; for the officer who assumes to act against him, being without warrant of law for his action, must stand before the law as an individual wrong-doer, and cannot claim that a suit against him as a tort-feasor is a suit against the state which has tried, but ineffectually, to give him authority to do what he has attempted. Where, therefore, the terms of an act under which state securities are issued are such that the coupons to the same are receivable for taxes, and it is made the duty of collectors to receive them when tendered, if afterwards the state forbids their reception, and a collector refuses a tender and proceeds to enforce the tax by

¹Hartman v. Greenhow, 102 U. S. 672; Poindexter v. Greenhow, 114 U. S. 270; Harvey v. Virginia, 20 Fed. Rep. 411; Willis v. Miller, 29 Fed. Rep. 238. The revenue license to practice law imposed by the Virginia code is a "tax" within a statute making coupons cut from the bonds of the state receivable for "all taxes," debts, dues, and demands within the state; and after a lawful tender of the proper amount thereof in payment of such license tax, by a person otherwise authorized, he may enter upon practice at once; and any law imposing penalties therefor is void as impairing the obligation of a contract: Royall v. Virginia, 116 U. S. 572. The contract obligation to receive such coupons in payment of taxes is not, however, impaired by a statute requiring license fees to be paid "in lawful money of the United States" so far as the payment of licenses to sell intoxicating liquors is concerned, since the state has the right, in the case of such licenses, to impose any conditions it deems best

for the public good: McGahey v. Virginia, 135 U. S. 662. The contract right to have such coupons received in payment of taxes is not violated by a statute placing on one who tenders them in such payment the burden of proving that they are genuine: Ex parte Ayers, 123 U. S. 443. But such contract right is impaired by a statute requiring the holders of such coupons to produce in court, in a suit involving their genuineness, the bonds for which they were cut, and to prove that they were actually cut therefrom; and it is also impaired by a statute providing that expert evidence shall not be received as to the genuineness of such coupons, and by a statute requiring one who sells such coupons, or who tenders or passes such coupons for another, to pay a certain high license, and by a statute which in effect prohibits the tender of coupons that are more than a year past due: McGahey v. Virginia, 135 U. S. 662. And see, further, McCullough v. Virginia, 172 U. S. 102.

distrain of goods, the taxpayer may bring suit for the goods seized, as he might in any case of wrongful dispossession, and proof of the tender of the coupons will be held an effectual answer to any attempted justification by the officer of the seizure.¹ Thus indirectly, in such a case, would the contract of the state be enforced.

Municipal Repudiation. It is customary, as will be shown hereafter, for the state to permit the municipalities to vote and levy the taxes for their own local purposes, and to determine what the amount of these shall be, within limits prescribed by the state to prevent oppression, and also to determine the purposes to which the sums raised shall be appropriated. A municipal debt is in many cases the first step in taxation; the levy of taxes being the only means whereby the debt can be paid. It sometimes happens that a municipality is found to have contracted indebtedness to an extent that is felt to be extremely burdensome; and then a local sentiment may spring up in favor of refusing to raise the necessary taxes for its payment. The purpose may be either to avoid the payment altogether or to postpone it for a time, or perhaps to force a compromise with creditors and an abatement. Whatever may be the purpose, the refusal to levy taxes to meet municipal obligations according to their terms is a public wrong; and as the state has ample power to remedy it, its honor is concerned in taking the necessary steps for that purpose. The most prompt and effectual remedy may be found to be the levy of a tax to provide for the indebtedness under a law specially adapted to the purpose, and by means of agencies appointed by the state. The power of the state to adopt this course is unquestionable.² But if the existing law, or any law that should be adopted for the purpose, required the municipality itself to levy the tax, its officers might be compelled by *mandamus* to do so.³ It is only

¹ *Poindexter v. Greenhow*, 114 U. S. 270; *White v. Greenhow*, 114 U. S. 307; *Chaffin v. Taylor*, 114 U. S. 309; *Allen v. Railroad Co.*, 114 U. S. 311. And see *Royall v. Virginia*, 116 U. S. 572. The right conferred by the constitution of Texas to pay taxes levied by a municipal corporation for the payment of a previously existing indebtedness,

in the coupons, bonds, or other indebtedness for the payment whereof the tax was levied, does not continue after the taxpayer is in default. *Bammel v. Houston*, 68 Tex. 10.

² *Dunovan v. Green*, 57 Ill. 63. And see *post*, ch. XXI.

³ *Whiteley v. Lansing*, 27 Mich. 131; *Morgan v. Commonwealth*, 55 Pa. St.

necessary for this purpose that the amount of the demand shall be conclusively fixed and determined, and that the time has arrived when it has become the duty of the municipality to provide for it;¹ and if the amount has been fixed by judgment, the court which has rendered the judgment has jurisdiction by *mandamus* to compel the levy of a tax for its payment.² By one or the other of these remedies, therefore, it is supposed municipal creditors will secure payment of all just demands.

It is possible, however, that the state itself may so far sympathize with a debtor municipality as to be disposed to aid it in its obstructive methods to prevent collection; and it may seek to do this by so limiting the municipal power to tax that it shall be impossible for it to pay its debts by taxes raised within the legal limit. Where such obstruction has been attempted, however, it has been judicially determined that the limitation of the power to tax under such circumstances was an impairment of the obligation of contracts, and therefore inoperative. The argument shortly stated is, that the state, in conferring upon its municipalities the power to contract debts and to levy taxes for their satisfaction, impliedly contracts with those who become creditors in reliance upon the power, that such power shall not, while their demands remain unpaid, be so limited, impaired or hampered as to preclude the municipality's providing for and satisfying such demands according to their terms. Any subsequent legislation, therefore, which could have such injurious effect upon the interests of creditors, and deprive them of the resource of taxation which they had a constitutional right to rely on, will be treated as inoperative and void, and a levy of taxes may be compelled, as it might have been if no such legislation had been attempted.³ And

456; *Robinson v. Supervisors*, 43 Cal. 353; *Nelson v. St. Martins*, 111 U. S. 716. And see *post*, ch. XXIII.

¹ *Nelson v. St. Martins*, 111 U. S. 716; *Dayton v. Rounds*, 27 Mich. 82; *State v. New Orleans*, 34 La. An. 477.

² See *United States v. Mobile*, 4 Woods 537; *post*, ch. XXIII.

³ The leading case on this subject is *Von Hoffman v. Quincy*, 4 Wall.

535, followed in *Galena v. Amy*, 5 Wall. 705; *Riggs v. Johnson Co.*, 6 Wall. 166; *Rees v. Watertown*, 19 Wall. 109; *Wolff v. New Orleans*, 103 U. S. 358; *Port of Mobile v. Watson*, 116 U. S. 289; *Seibert v. United States*, 122 U. S. 284; *Ford v. Delta, etc. Co.*, 164 U. S. 662; *United States v. Jefferson Co.*, 5 Dill. 310; s. c., 1 McCrary, 356; *United States v. New*

where contracts have been entered into under a settled construction of the state constitution by its judiciary, they cannot

Orleans, 2 Woods 230; Sibley v. Mobile, 3 Woods 535; Brodie v. McCabe, 33 Ark. 690; Board of Education v. Louisville, H. & St. L. R. Co. (Ky.), 62 S. W. Rep. 1125; State v. New Orleans, 37 La. An. 13, 528; Bunch v. Wolerstein, 62 Miss. 56; Woodruff v. State, 77 Miss. 68; State v. Great Falls, 19 Mont. 518; Broadfoot v. Fayetteville, 124 N. C. 478. See to the same effect, Saloy v. New Orleans, 33 La. An. 79; State v. Shreveport, 33 La. An. 1179, in which it was held that the municipality might complain of the diminution of its power to tax which would preclude payment of its contracts, even if the creditors did not. It is immaterial whether the incompetent restriction is attempted by legislation or by constitutional amendment: Ibid. See Opinions of Justices, 58 N. H. 623. A grant of power to a municipality to levy a tax to pay a judgment against it may be repealed if made after the contract upon which the judgment was founded: Devereaux v. Brownsville, 29 Fed. Rep. 742. Where, at the time a contract is entered into, realty only is taxable for the payment, a subsequent extension to embrace personalty is a mere gratuity, and may be repealed: Foote v. Howard County Court, 1 McCrary, 218. The power which has been conferred upon a municipal corporation to tax or to contract debt in aid of a railroad may be taken away at any time before the tax is actually laid or the debt contracted, even though the people have voted the aid. And a subscription made by the municipal officers after by legislation the power is taken away is void: Lieb v. Wheeling, 7 W. Va. 501. After paving contracts had been made, wards were added to the municipality, and it was provided that the residents should not be liable for previous mu-

nicipal debts. Held, that there were no contract obligations between the paving contractors and the newly-added residents which would make this incompetent: United States v. Memphis, 97 U. S. 284. A constitutional provision that no parish or municipal tax for all purposes shall exceed a certain sum has no retro-active effect so as to prevent the enforcement of improvement contracts prior to its adoption, and so does not violate the law against impairment of contracts: Shreveport v. Cole, 129 U. S. 36. The right given by statute to damages for injury from a mob is not founded on contract, and if legislation after the recovery of a judgment changes the rate of taxation that may be levied for its payment, the federal courts cannot interfere: Louisiana v. New Orleans, 109 U. S. 285. When *mandamus* is applied for to compel taxation for the payment of a judgment, the court will look to see whether the judgment is grounded in contract or tort; if the former, and the contract appears to have been made upon the faith of taxes to be levied, laws modifying the taxing power to the prejudice of the creditor are unconstitutional if thereby he is deprived of all adequate and efficacious remedy: Nelson v. St. Martins, 111 U. S. 716. A special charter reducing a city's power to pay a judgment founded on a tort is not unconstitutional as impairing the obligation of a contract: Sherman v. Langham, 92 Tex. 13. A city cannot claim exemption from taxation on a water-works owned and operated by it, on the ground that the imposition of the tax interferes with the vested rights of holders of city bonds, the bondholders not being parties to the proceeding: Newport v. Commonwealth (Ky.), 50 S. W. Rep. 845.

be invalidated afterwards by a change in such construction,¹ or by any change in the constitution itself.²

If the state, however, in the amplitude of its power over the municipalities of the state, should see fit to take away altogether the corporate powers of the debtor body, and create instead one or more entirely new corporations, which should in law be, not the successors of the other under new names, but new and distinct creations, the creditors might, perhaps, except as to the property of the defunct body, be without remedy. The corporation having ceased to exist, there could no longer be enforcement of their demands through taxation under the old law, and without law it is impossible that taxes should be laid. This was so held where the state by general law abolished a considerable number of municipalities, and made the several communities embraced in the territorial limits of such municipalities respectively taxing districts, in order to provide the means of local government for the peace and safety and general welfare of the district.³ And it was also held that the property of individual citizens of the abolished municipalities could not by judicial proceedings be subjected to the payment of corporate debts; neither could the property which the municipalities themselves had held for public uses such as public buildings, streets, squares, parks, promenades, wharves, landing places, fire engines, hose, etc., or, in general, anything held for governmental purposes. All such public property would pass, when the municipality ceased to exist, under the immediate control of the state. Even the taxes levied according to law before the general law was passed could only be collected under legislative authority, and if no such authority existed, the remedy of the creditors would be an appeal to the legislature, which alone could grant relief.⁴

¹ *Gelpcke v. Dubuque*, 1 Wall. 175; *Olcott v. Supervisors*, 16 Wall. 678; *Douglass v. Pike County*, 101 U. S. 677.

² *White v. Hart*, 13 Wall. 646; *Opinions of Justices*, 58 N. H. 623. Where a contract is made after the adoption of a constitutional amendment limiting the satisfaction of contracts to the revenues of the year, and subsequently a constitution is adopted

limiting the rate of municipal taxation, the obligation of the contract is not impaired, as there was no obligation to exert in the future the

then existing powers of taxation: *State v. New Orleans*, 37 La. An. 436.

³ *Meriwether v. Garrett*, 102 U. S. 472.

⁴ *Meriwether v. Garrett*, 102 U. S. 472. See *Luehrman v. Taxing District*, 2 Lea 425. These taxing dis-

It is possible, therefore, for the state to make use of its power, unjustly, and under circumstances where the political remedy is the only one within the reach of parties wronged.

Taxing Contracts. It has never been supposed that the clause in the constitution of the United States which forbids the states to pass laws impairing the obligation of contracts had deprived the states of the power to tax contracts;¹ and it has been customary for them to tax contracts for the payment of money, or having a money value, as the personal property of the owner. The right to do this, if ever in doubt, is now settled.²

But to render a contract taxable it must be subject to the jurisdiction of the government that assumes to tax it; and it

tricts are municipal corporations, and suable as such: *Uhl v. Taxing District*, 6 Lea 610. A statute abolishing a levee district, but fully protecting the rights of the creditors of the levee board, was held not void as impairing the obligation of contracts: *Shotwell v. Louisville, N. O. & T. R. Co.*, 69 Miss. 541.

¹The provisions of the national constitution in regard to the obligation of contracts does not enable a contract between individuals to prevent a municipal corporation from exerting, as between it and one of the individuals, any power of taxation it legally possesses: *Henderson Bridge Co. v. Henderson*, 173 U. S. 592. A statute providing that drainage assessments shall be a lien on the land assessed, does not violate the obligations of contracts or divest vested rights, even in the case of land subject to a deed of trust executed long prior to the assessment, since drainage assessments are a species of taxation: *Wabash E. R. Co. v. Com'rs*, 134 Ill. 384.

²See *Catlin v. Hull*, 21 Vt. 152; *Champaign County Bank v. Smith*, 7 Ohio St. 42; *Cook v. Smith*, 30 N. J. L. 387. The Michigan statute providing for the taxation of real-

estate mortgages to the owners thereof was held not to impair the obligation of contracts; but the mortgagers' agreements existing at the time the act was passed to pay taxes were not affected: *Detroit Common Council v. Board of Assessors*, 91 Mich. 78. The obligation of a mortgage contract containing no express provision that the mortgager shall pay taxes, was not impaired by a constitutional provision making the mortgagee primarily liable for taxes assessed against the property, and providing that if the mortgager paid all the taxes he might deduct from the debt the amount assessed against the mortgage: *Hay v. Hill*, 65 Cal. 383. See *Sanford v. Savings & Loan Assoc.*, 80 Fed. Rep. 54. A state may tax mortgages held by residents on land in other states: *Kirtland v. Hotchkiss*, 42 Conn. 426, 100 U. S. 491. See *People v. Home Ins. Co.*, 29 Cal. 534; *Maltby v. Reading, etc. Co.*, 52 Pa. St. 140. A statute providing that when a railway is operated under a lease the tax shall be paid by the lessee, and deducted from the rent, is not unconstitutional as impairing the obligation of contracts: *Vermont & C. R. Co. v. Vermont Cent. R. Co.*, 63 Vt. 1.

is not within its jurisdiction unless the owner is domiciled there, or the contract itself is there in the possession and control of an agent of the owner and for the owner's purposes, and not as mere temporary custodian. Corporation bonds given in one state by one of its corporations, but owned and held by persons domiciled in another state, cannot be taxed in the state where they are issued, even though they are payable in that state and are secured there by mortgage on realty. Therefore a law imposing such a tax, and requiring the treasurer of the corporation to pay it and retain the amount from the sum payable to the bond-holder, is a law which undertakes to tax that which is not within its reach, and is for that reason void.¹ This principle is as much applicable to public securities as to any others, and it is not, therefore, competent for a city which has issued obligations whereby it has promised to pay certain definite sums, to diminish these payments under the guise of taxing them. A city may be empowered to tax all property within it, but debts are not property, and credits are not property within a city when not held or owned there.² So, while a franchise tax might be imposed upon a corporation,

¹ State Tax on Foreign Held Bonds, 15 Wall. 300. See, also, *Railroad Co. v. Jackson*, 7 Wall. 262; *Murray v. Charleston*, 96 U. S. 432; *Hartman v. Greenhow*, 102 U. S. 672; *New York, L. E. & W. R. Co. v. Pennsylvania*, 153 U. S. 628; *De Vignier v. New Orleans*, 16 Fed. Rep. 11; *Oliver v. Washington Mills*, 11 Allen 268. The language of the case of *State Tax*, etc., *supra*, was modified in the recent case of *Savings & Loan Soc. v. Multnomah County*, 169 U. S. 421; but it still is authority for the text as above. A tax on money set apart by a corporation to pay interest on foreign-held bonds is not a tax on the bonds but on the earnings of the corporation which pays the tax, and is valid: *Railroad Co. v. Collector*, 100 U. S. 595; *United States v. Railway Co.*, 106 U. S. 327. A statute taxing the indebtedness to residents of corporations doing business within the state, and compelling them to

collect the taxes by deducting them from the interest, does not impair the obligation of contracts: *Commonwealth v. Delaware Div. Canal Co.*, 123 Pa. St. 594; *Commonwealth v. Lehigh Valley R. Co.*, 129 Pa. St. 429; *Commonwealth v. New York, L. E. & W. R. Co.*, 150 Pa. St. 234; *Commonwealth v. Delaware & H. Canal Co.*, 150 Pa. St. 245.

² *Murray v. Charleston*, 96 U. S. 432; *De Vignier v. New Orleans*, 16 Fed. Rep. 11. Stock representing a city's debt is not taxable against the owner who lives out of the state: *Baltimore v. Hussey*, 67 Md. 112. The taxation of corporate stock to the shareholders without deducting the value of state and county bonds exempt from taxation in the hands of the corporation is not an indirect taxation of the bonds themselves, and does not impair the obligation of contracts: *Parker v. Sun Ins. Co.*, 42 La. An. 1172.

measured by dividends, it is not competent for a state to levy a tax directly upon the dividends of foreign stockholders, and require the corporation to pay the tax and deduct it from the dividend paid over.¹

What Impairs a Contract. The obligation of a contract is the law which binds the parties to perform their agreement.² This law must govern and control the contract in every shape in which it is intended to bear upon it, whether it affect its validity, construction, or discharge. Any law which enlarges, abridges, or in any manner changes the intention of the parties discoverable in it, necessarily impairs the contract itself, which is but evidence of that intention. The manner or the degree in which this change is effected can in no respect influence this conclusion; for, whether the law affect the validity, the construction, the duration, the mode of discharge or the evidence of the agreement, it impairs the contract, though it may not do so to the same extent in all the supposed cases.³ It is not by the constitution to be impaired at all. This is not a question of degree or cause, but of encroaching in any respect on its obligation; dispensing with any part of its force.⁴ There is no room for any question, therefore, that when the state has stipulated by contract to give exemption from taxation, or has commuted the uncertain taxes for a definite and fixed sum or sums, and afterwards undertakes to tax, in the same manner as it taxes other subjects, the persons, corporations, or property which were the subject of the exemption or commutation, the obligation of the contract is impaired.⁵ So

¹Oliver v. Washington Mills, 11 Allen 268.

²Sturges v. Crowninshield, 4 Wheat. 122.

³Washington, J., in Ogden v. Saunders, 12 Wheat. 213, 256; Mt. Pleasant Cem. Co. v. Newark, 52 N. J. L. 539. The latter case holds that a stipulation in a cemetery company's charter that no assessment should be imposed on the burial ground until the board of freeholders should order otherwise, is legal, and that an assessment by an act of the legislature impairs the contract.

⁴Planters' Bank v. Sharp, 6 How. 301, 327. To the same effect is Green v. Biddle, 8 Wheat. 1, 84. See Rivet v. New Orleans, 35 La. An. 134.

⁵State v. Morris, 49 N. J. L. 286. Where the charter of a railroad company has exempted the road from all taxation by cities and towns, a levee tax assessed by a levee district, under authority of the legislature, is void as impairing the obligation of a contract: Yazoo & M. V. R. Co. v. Board of Levee Com'rs, 37 Fed. Rep. 24. A city, having granted to a water-works company a non-exclusive fran-

if the state by a bank charter agrees that the bills of the bank shall be received in payment of taxes, the agreement constitutes a contract between the state and those who shall afterwards become owners of the bills, and any law which denies the right to make such payment impairs the obligation of the contract, and is void.¹ And if the state, in issuing its own bonds, shall make a like stipulation for their reception in payment of taxes, the obligation of the contract is impaired by any subsequent law which seeks to preclude the exercise of the right.² So if the state, in the case of contracts made and payable within it, but held by persons domiciled abroad, were to attempt indirect taxation of the holders by requiring the debtor to pay the tax and retain the amount from the creditors, this would be a plain impairment of the obligation of the contracts, since it would deprive the creditors of a portion of the sum agreed to be paid to them.³

chise to construct and maintain a system of waterworks, was authorized by statute to construct an independent system of its own. Held, that provisions in the statute authorizing the city to tax the company for the payment of the obligations incurred in constructing the city's works, and to lay a discriminating tax against the company's patrons, were void as impairing the obligations of the contract: *Skaneateles Waterworks Co. v. Skaneateles*, 161 N. Y. 154. See *Warsaw Waterworks Co. v. Warsaw*, 161 N. Y. 176. Where, under an ordinance giving it permission to erect its lines, a telephone company has been established, it is not within the city's taxing power to impose. "as a consideration for the privilege," a charge of \$5 on each pole of the company's lines; the imposition of such new and burdensome consideration impairs the contract: *New Orleans v. Great South. T. & T. Co.*, 40 La. An. 41. The constitutional provision against impairing contract obligations is a limitation upon the taxing power: *Murray v. Charleston*, 96 U. S. 432.

¹ *Woodruff v. Trapnall*, 10 How. 190; *Furman v. Nichol*, 8 Wall. 44; *Keith v. Clark*, 97 U. S. 454.

² *Hartman v. Greenman*, 102 U. S. 672; *Poindexter v. Greenhow*, 114 U. S. 270; *Royall v. Virginia*, 116 U. S. 572; *McGahey v. Virginia*, 135 U. S. 662; *McCullough v. Virginia*, 172 U. S. 102; *Harvey v. Virginia*, 20 Fed. Rep. 411; *Willis v. Miller*, 29 Fed. Rep. 238.

³ *State Tax on Foreign Held Bonds*, 15 Wall. 300. The contract arising from state statutes authorizing a foreign railroad company to construct and operate its road within the state, and its acting thereon, is impaired by a later statute requiring the company to collect a tax on its bonds held by residents of the state, by deducting the tax from the interest on such bonds, they having been previously issued under authority of the state by which the corporation was created, and the interest being payable in that state only: *New York, L. E. & W. R. Co. v. Pennsylvania*, 153 U. S. 628. There would be nothing incompetent in similar legislation if the tax itself were lawful and

The remedy for the enforcement of a contract is a necessary part of it, without which it could have no legal obligation whatever. But there is, and can be, nothing unchangeable in remedies, and the state must be left at liberty to change them at discretion.¹ In the recognition of this right, however, it is always assumed that no change will be made which will leave the party without a remedy for the enforcement of his contract substantially equal to and as efficient and valuable as that the law entitled him to claim when his contract was made. If the remedy is wholly, in some distinct and important part, taken away, or is hampered with conditions or restrictions, or otherwise seriously impaired in value, the obligation of the contract is impaired in this particular.²

Where, however, the issues of a certain bank were by law receivable for taxes, and an act was passed which provided that there should be no other remedy in any case of the collection of revenue, or an attempt to collect the same illegally, or in funds only receivable by the collector under the law—the same being other or different funds than such as the taxpayer may tender or claim the right to pay—than by paying the tax under protest, and within thirty days suing the collector to recover it; the judgment recovered, if any, to be a first claim on the treasury,—it was held that this act did not leave a party without adequate remedy for enforcing his right to pay his taxes in the bills, and did not, therefore, impair the obligation of the state contract.³ But if, under the law which provides for the issue of obligations, a tender thereof for taxes is a discharge, the tender, notwithstanding any subsequent legislation, will have that effect, and the taxpayer, if his property is seized for the taxes, may reclaim it on legal process.⁴

the corporation were thus indirectly made the collector of sums its members were legally bound to pay: See ch. XIV.

¹ *Bronson v. Kinzie*, 1 How. 311.

² See *Von Hoffman v. Quincy*, 4 Wall. 535, and numerous cases cited; *Tennessee v. Sneed*, 96 U. S. 69; *Poindexter v. Greenhow*, 114 U. S. 270. The law of a state for the collection of a tax necessary to pay a judgment,

in force at the time when the judgment was rendered, cannot be altered so as to afford a less efficacious remedy without impairing the obligation of a contract: *Seibert v. United States*, 122 U. S. 284.

³ *Tennessee v. Sneed*, 96 U. S. 69. Compare *Poindexter v. Greenhow*, 114 U. S. 270.

⁴ *Poindexter v. Greenhow*, 114 U. S. 270.

Exemption of agencies of government. No state can impose taxes on persons, property, or other subjects of taxation which are not within its jurisdiction.¹ This is self-evident, but it has peculiar application in this country under the federal constitution, which apportions the sovereign authority between the state and the nation, and gives to each over certain subjects an exclusive jurisdiction. Whatever pertains to this exclusive jurisdiction is excluded from the taxing power of the other as much as if it were beyond its territorial limits. The rules upon this subject, as they have been laid down by the authorities, appear to be the following:

1. *General Liability.* Every person within a state owing temporary or permanent allegiance to it; all property of every description within the state and entitled to the protection of its laws; every private franchise, privilege, business, or occupation, is subject to be taxed by the state, in return for the benefits received and anticipated from state government and protection.² But they are also on precisely the same grounds subject to be taxed by the federal government, whenever its necessities or policy shall be thought to require it.³

2. *National and State Powers Exclusive.* It is the theory of our system of government that the state and the nation alike are to exercise their powers respectively in as full and ample a manner as the proper departments of government shall determine to be needful and just, and as might be done by any other sovereignty whatsoever. This theory by necessary implication excludes wholly any interference by either the state or the nation with an independent exercise by the other of its constitutional powers. If it were otherwise, neither government would be supreme within what has been set apart for its

¹ See *ante*, pp. 84-86.

² *Savings & L. Soc. v. Multnomah County*, 169 U. S. 421; *People v. Ames*, 24 Colo. 422; *Bigger v. Ryker* (Kan.), 63 Pac. Rep. 740; *Street v. Columbus*, 75 Miss. 822; *In re McPherson*, 104 N. Y. 306; *Washington Iron Works Co. v. King County*, 20 Wash. 150. It is said in *Lane County v. Oregon*, 7 Wall. 71, that with the exception of

the restrictions expressly imposed by the constitution of the United States, the state power of taxation in respect to property, business, and persons within its limits remains entire. There is nothing in the constitution which contemplates authorizing any direct abridgment of this power by the national legislature.

³ *Knowlton v. Moore*, 178 U. S. 41, 58.

exclusive sphere, but, on the other hand, would be liable at any time to be crippled, embarrassed, and perhaps wholly obstructed in its operations, at the will or caprice of those who for the time being wielded the authority of the other. And that an exercise of the power to tax might have that effect is manifest from a consideration of the nature of the power. Any "power which in its nature acknowledges no limits,"¹ and which, even in a lawful and legitimate exercise, may be carried to the extent of an absolute appropriation of property or destruction of the franchise or privilege upon which it is exerted,² must, as a power of one sovereignty, be incapable of being admitted within the jurisdiction of another for exercise at the discretion of the power wielding it.³ And the state and the nation having each their separate and distinct sphere, within which they are permitted, by the fundamental law, to exercise independent authority, the principle which excludes from one sovereignty the taxing power of another is as much applicable within the American Union to the taxation of state and nation respectively, as it is elsewhere.

3. *Federal Agencies.* It follows as a necessary and inevitable conclusion, that the means or agencies provided or selected by the federal government as necessary or convenient to the exercise of its functions cannot be subjected to the taxing power of the states, since, if they could be, a state dissatisfied therewith, or disposed for any reason to cripple or hamper the operations of the federal government, might tax them to an extent that would impair their usefulness, or even put them out of existence. On this ground the power of the states to tax the United States Bank was denied, the bank having been chartered

¹ Per Marshall, Ch. J., in *Weston v. Charleston*, 2 Pet. 449, 460; *Lane County v. Oregon*, 7 Wall. 71; *Bank of Commerce v. New York*, 2 Black 620; *Carroll v. Perry*, 4 McLean 25; *Cheaney v. Hooser*, 9 B. Monr. 330, 339; *Veazie Bank v. Fenno*, 8 Wall. 533, 548; *State v. Bell*, 1 Phil. (N. C.) 76. Compare *Berney v. Tax Collector*, 2 Bailey 654.

² *McCulloch v. Maryland*, 4 Wheat.

316, 431, per Marshall, Ch. J.; *Veazie Bank v. Fenno*, 8 Wall. 533, 548, per Chase, Ch. J.; *National Bank v. United States*, 101 U. S. 1; *California v. Central Pac. R. Co.*, 127 U. S. 1; *Fairbank v. United States*, 181 U. S. 283; *Savings Association v. Marks*, 3 Woods 553.

³ See *Railroad Co. v. Husen*, 95 U. S. 405; *Knowlton v. Moore*, 178 U. S. 41, 60.

as an agency of government.¹ This principle is applicable to the national banks now in operation, which also have been called into existence by the federal government for its purposes—or at least on grounds of national policy.² But the sovereignty in whose interest the exemption exists is fully protected if it controls in respect to taxation; and it may, in its discretion, permit its own agencies or its own property to be taxed by the other, under limitations prescribed by itself, as the federal government has permitted the states to tax the national banks as they tax other moneyed corporations within their jurisdiction.³ On the general principle above stated, the states are precluded from taxing, without federal permission, the salaries or emoluments of national officers,⁴ or the bonds of the United States issued under their constitutional power to borrow money for governmental purposes,⁵ or the premium on or excess above

¹ *McCulloch v. Maryland*, 4 Wheat. 316; *Osborne v. Bank of U. S.*, 9 Wheat. 738.

² *Van Allen v. Assessors*, 3 Wall. 573; *Austin v. Boston*, 14 Allen 359; *Flint v. Boston*, 99 Mass. 141; *State v. Newark*, 39 N. J. L. 280; *National Bank v. Mobile*, 62 Ala. 284; *Sumter Co. v. National Bank*, 62 Ala. 464; *McHenry v. Downer*, 116 Cal. 20. An act imposing a tax on "the presidents of each of the banks of the state" was held inoperative when sought to be applied to the presidents of national banks: *Linton v. Childs*, 105 Ga. 567.

³ *Van Allen v. Assessors*, 3 Wall. 573; *National Bank v. Commonwealth*, 9 Wall. 353; *Lionberger v. Rouse*, 9 Wall. 468; *Talbott v. Board*, 139 U. S. 438; *Van Slyke v. Wisconsin*, 154 U. S. 581; *Union Nat. Bank v. Chicago*, 3 Biss. 82; *Scobee v. Bean* (Ky.), 59 S. W. Rep. 860. For the assessment of taxes against national banks and their stockholders, see *post*, ch. XII.

⁴ *Dobbins v. Commissioners of Erie County*, 16 Pet. 435. In *Melcher v. Boston*, 9 Met. 73, a clerk in a postoffice was held taxable by the

state on his income. See *Sweat v. Boston, etc. R. Co.*, 5 N. B. R. 249.

⁵ *Weston v. Charleston*, 2 Pet. 449; *Bank of Commerce v. New York*, 2 Black 620; *Bank-Tax Case*, 2 Wall. 200; *Van Allen v. Assessors*, 3 Wall. 573; *People v. Commissioners*, 4 Wall. 244; *Bradley v. People*, 4 Wall. 459; *Banks v. Mayor*, 7 Wall. 16; *Bank v. Supervisors*, 7 Wall. 26; *German Am. Bank v. Burlington*, 54 Iowa 609; *Howard Savings Inst. v. Newark*, 63 N. J. L. 547. Compare *State v. Jackson*, 33 N. J. L. 450; *Commonwealth v. Hamilton Manuf. Co.*, 12 Allen 298; *Commonwealth v. Provident Inst.*, 12 Allen 312; *Coite v. Society for Savings*, 32 Conn. 173. Under the permissive act of congress the taxing officers of a state acquire no power to tax federal securities where there has been no subsequent legislation by the state: *Howard Savings Inst. v. Newark*, 63 N. J. L. 547. United States bonds and treasury notes are to be deducted from a banker's capital in ascertaining the amount thereof for assessment: *Campbell v. Centerville*, 69 Iowa 439. What has been paid for United States bonds pur-

the par value of such bonds,¹ or the revenue stamps issued by the United States and held by individuals,² or treasury notes issued and circulating as money,³ or bonds issued by the District of Columbia under authority of congress,⁴ or the messages of the government sent by telegraph.⁵ But the mere fact that a corporation receives its charter and pecuniary or other aid

chased with the general assets of a savings bank should be deducted from such bank's taxable assets: *Ottumwa Savings Bank v. Ottumwa*, 95 Iowa 176. A tax on the franchises of a corporation whose capital is in part invested in United States bonds is not a tax on such securities: *Society for Savings v. Coite*, 6 Wall. 594; *Provident Inst. v. Massachusetts*, 6 Wall. 611; *Hamilton Co. v. Massachusetts*, 6 Wall. 632; *Home Ins. Co. v. New York*, 134 U. S. 594; *People v. Home Ins. Co.*, 92 N. Y. 328. The transfer under state intestate laws or by will of property consisting of or including federal securities is subject to taxation by the state, the tax in such case not being regarded as imposed upon the securities themselves: *Plummer v. Coler*, 178 U. S. 115; *Wallace v. Myers*, 38 Fed. Rep. 184; *Sherman's Estate*, 153 N. Y. 1; *In re Whiting*, 2 App. Div. (N. Y.) 590; *Strode v. Commonwealth*, 52 Pa. St. 181. For the same reason the federal tax act of June 13, 1898, applies to a legacy of United States bonds, although the statute authorizing their issue exempts them from assessment or taxation: *Murdock v. Ward*, 178 U. S. 139. The New York collateral inheritance tax law being limited by its terms to "property within the jurisdiction of this state for the purposes of taxation," excludes from valuation for the transfer tax federal bonds: *Whiting's Estate*, 150 N. Y. 27; *Sherman's Estate*, 153 N. Y. 1. U. S. Rev. Stat. § 3701, providing that "all stocks, bonds, treas-

ury notes, and other obligations of the United States shall be exempt from taxation by or under state, municipal, or local authority," is not infringed by the Ohio statute providing that each person's statement for taxation shall set forth "the monthly average amount or value for the time he held or controlled the same, within the preceding year, of all moneys, credits, or other effects within that time invested in or converted into bonds or other securities of the United States:" *Shotwell v. Moore*, 45 Ohio St. 632. Money in the hands of others, subject to draft, is a credit due the bank, and is not exempt though the money originally deposited may have been United States treasury notes: *Griffin v. Heard*, 78 Tex. 607.

¹ The premium on or excess above the par value of federal bonds is not taxable by state or local authority, being only an incident of the bonds and non-existent apart therefrom: *Rhode Island Hospital Trust Co. v. Armington*, 21 R. I. 3; *People v. Com'rs of Taxes*, 76 N. Y. 64.

² *Palfrey v. Boston*, 101 Mass. 329.

³ *Montgomery County v. Elston*, 32 Ind. 27; *Bank of N. Y. v. Supervisors*, 7 Wall. 26; *Ogden v. Walker*, 59 Ind. 460; *Horne v. Green*, 52 Miss. 452. In this last case it was held that the rule of exemption applied to national bank notes.

⁴ *Grether v. Wright*, 75 Fed. Rep. 742.

⁵ *Huntington v. Central Pac. R. Co.*, 2 Sawy. 503; *Railroad Co. v. Peniston*, 18 Wall. 5. See *post*, p. 140.

from the United States does not fix its character as a federal agency, nor does the fact that the United States sometimes make use of it for their purposes, as they might of a similar convenience brought into existence in some other way.¹ And the state may tax the property of federal agencies with other property in the state, and as other property is taxed, when no law of congress forbids, and when the effect of the taxation will not be to defeat or hinder the operations of the national government. A different rule, as has been well said, "would remove from the reach of state taxation all the property of every agent of the government. Every corporation engaged in the transportation of mails or of government property, of every description, by land or water, or in supplying materials for the use of the government, or in performing any service of whatever kind, might claim the benefit of the exemption,"² and the effect would be to embarrass and injure the state to the benefit of individuals rather than of the nation.³

4. *State Agencies.* The federal government is also without power to tax the corresponding means or agencies of the states, or the salaries of state officers; the state in the exercise of its functions being entitled to the same immunity from congressional interference that the nation is from that of the state.⁴ And a state municipal corporation, being only a portion of its sovereign power, created as a convenient if not a necessary part of the machinery of state government, is as much exempt

¹ *State v. Thomas Cruse Savings Bank*, 21 Mont. 50.

² *Thomson v. Pacific R. Co.*, 9 Wall. 579, 591.

³ See *Railroad Co. v. Peniston*, 18 Wall. 5.

⁴ *Ward v. Maryland*, 12 Wall. 418, 427, per *Clifford, J.*; *Collector v. Day*, 11 Wall. 113; *Railroad Co. v. Peniston*, 18 Wall. 5; *Freedman v. Siegel*, 10 Blatch. 327; *Warren v. Paul*, 22 Ind. 276, 279; *State v. Gaston*, 32 Ind. 1; *Fifield v. Close*, 15 Mich. 505; *Union Bank v. Hill*, 3 Cold. 325; *Smith v. Short*, 40 Ala. 385; *Jones v. Keep's Estate*, 19 Wis. 390; *Sayles v. Davis*, 22 Wis. 217; *Moore v. Quirk*,

105 Mass. 49. A railroad wholly owned by a state and operated by it is not taxable under the federal revenue laws: *Georgia v. Atkins*, 1 Abb. (U. S.) 22. Federal statutes requiring revenue stamps to be attached to certain instruments cannot prevent such instruments, though not stamped, from being used in proceedings in state courts: *Fifield v. Close*, 15 Mich. 505; *Trowbridge v. Addoms*, 23 Colo. 518; *Dawson v. McCarty*, 21 Wash. 314. Bonds issued by a state or under its authority are not taxable by the United States: *Mercantile Nat. Bank v. New York*, 121 U. S. 138.

from the taxation of the federal government, in all its revenues and property, as the state itself.¹

5. *Inadmissible Personal Taxes.* A tax upon persons may possibly, in some cases, tend to embarrass the operations of either national or state government, in which case it would be void unless imposed by the government which was liable to be inconvenienced by it. And, on this ground, it has been held that a state tax of a certain sum on every person leaving the state by public conveyance was invalid; the tendency being to embarrass the functions of the national government, by obstructing the travel of citizens and officers of the United States in the business of the government and the transportation of armies and munitions of war.²

¹ *United States v. Railroad Co.*, 17 Wall. 322. In this case the facts were that the city of Baltimore held bonds of the Baltimore & Ohio R. Co. to a large amount. The internal revenue law of the United States then in force required every railroad company indebted upon bonds or other evidence of indebtedness bearing interest, or upon coupons representing the interest, to pay a tax of five per cent. upon all such interest or coupons, and authorized the company to retain the amount so paid as a tax from the creditor. The railroad company in this case refused to make the payment, so far as concerned the interest on bonds held by the city of Baltimore, and the court sustained it in the refusal, holding that the tax was not a tax upon the railroad company, but upon its creditors, and in the case of the interest in question was no more competent than if imposed directly upon the city. The United States cannot tax the bonds of a municipality of a state, because they would thereby interfere with and obstruct an instrumentality of a state government: *Pollock v. Farmers' Loan, etc. Co.*, 157 U. S. 429, 459. The bonds of the city of New York are not subject to

taxation because they are a means of carrying on the government: *Mercantile Nat. Bank v. New York*, 121 U. S. 138.

² *Crandall v. Nevada*, 6 Wall. 35. See *Telegraph Co. v. Texas*, 105 U. S. 460. The like principle was recognized in *State v. Jackson*, 33 N. J. 450, where a bounty voted to relieve a town from a draft was held invalid, as tending to defeat the legislation of congress on the subject. That case was decided by a divided court, and the decision is opposed to the current of authority. In *State Treasurer v. Philadelphia, etc. R. Co.*, 4 Houst. 158, a law which imposed a state tax on railroad companies of ten cents on every passenger carried within the state, excepting soldiers and sailors of the United States, was held to be not a tax upon the business of the carrier, measured by the number of persons carried, but a tax upon the persons carried, to be collected by the carrier for the state, and, consequently, so far as it operated upon persons entering into, departing from, or passing through the state, was, in effect, a regulation of commerce between the states, and, consequently, within the decision in *Crandall v. Nevada*.

6. *Public Property.* It is customary for the federal government, in receiving a new state into the Union, to require from that state — though without necessity¹ — a stipulation that the public domain lying within its limits shall not be taxed by

¹ Van Brocklin v. Tennessee, 117 U. S. 151; Blue Jacket v. Johnson Co., 3 Kan. 299; Duncan v. Newcomer, 9 S. D. 375. Lands purchased by the United States at a tax sale are not taxable by the state: People v. United States, 93 Ill. 30; Van Brocklin v. Tennessee, 117 U. S. 151. After the United States have caused a sale of land in confiscation proceedings they have no title left on the strength of which an exemption from taxation can be claimed: Newby v. Brownlee, 23 Fed. Rep. 320. Where land is judicially known to have belonged to the United States, and there is no evidence of a transfer of title, there can be no presumption that it is taxable: Bonner v. Phillips, 77 Ala. 427. Lands held not to belong to the United States, so as not to be taxable, merely because, after entry and payment of taxes, on notice from the land-office, a payment was made to the receiver before issue of the patent: Vinton v. Cerro Gordo County, 72 Iowa 155. The state has a right to tax a private corporation upon railroad property situated within the bounds of a government reservation: Fort Leavenworth, etc. Co. v. Lowe, 27 Kan. 749. And to tax equitable interests and improvements held or owned by individuals in government lands: Hodgdon v. Burleigh, 4 Fed. Rep. 111; Oswalt v. Hallowell, 15 Kan. 154; Quincy v. Lawrence, 1 Idaho 313; People v. Mining Co., 1 Idaho 409; State v. Tucker, 38 Neb. 56; Crocker v. Donovan, 1 Okl. 165; Territory v. Clark, 2 Okl. 82; Iverson v. Hance, 1 Wyo. 270. A possessory interest in public lands for mining purposes may be taxed as a species of property: People v. Shearer, 30 Cal. 645; People v. Cohen, 31 Cal. 210; People v. Mining Co., 37 Cal. 54; People v. Donnelly, 58 Cal. 144. The possessory claim to public lands, which may be taxed as something separate and distinct from the title in fee, is an actual possession, and not a constructive possession, or a mere claim to the land. Mortgaging and leasing public land do not constitute actual possession thereof: State v. Central Pac. R. Co., 21 Nev. 247. Where only the possessory claim is assessed the title or interest of the United States will not be affected: Ibid. The interest of a lessee in lands leased from the United States is taxable: Garland County v. Bates, 56 Ark. 227. Property occupied for the United States but not owned by it was held taxable to the owner in Speed v. St. Louis County Court, 42 Mo. 382. And the fact that the government has an interest in real estate does not preclude the taxation of other interests to the owners. State v. Moore, 12 Cal. 56. As, for example, ore taken from the lands: Forbes v. Gracey, 94 U. S. 762. Buildings erected by the United States for government use on leased lands are not taxable by the state. Andrews v. Auditor, 28 Grat. 115. A post-office and custom-house cannot be taxed for a street improvement: Fagan v. Chicago, 84 Ill. 227. Land acquired by the United States for a post-office held not subject to city taxation: Bannon v. Burnes, 39 Fed. Rep. 892. A legacy to the United States is subject to the so-called succession-tax law which is a limitation on the testator's power rather than a tax upon the property itself: Merriam's Estate, 141 N. Y. 479; United

the state. The disability remains effective until the United States shall have made sale, or other disposition, of the lands, but it then terminates, notwithstanding the title may not have passed by the actual execution and delivery of a patent of conveyance; the land being actually severed from the public domain by the sale itself.¹ But this principle will not apply in

States v. Perkins, 163 U. S. 625. A right in a railroad company to make use, for its purposes, of property owned by the United States, is not, under the statutes of Iowa, separately liable to taxation: *Chicago, etc. R. Co. v. Davenport*, 51 Iowa, 451. Lands in Nebraska granted to Alabama for school purposes held not taxable until the state had sold them: *Stoutz v. Brown*, 5 Dill. 445.

¹ *Carrol v. Safford*, 3 How. 441; *Astrom v. Hammond*, 3 McLean 107; *Carrol v. Perry*, 4 McLean 25; *McGoon v. Scales*, 9 Wall. 23; *Railway Co. v. McShane*, 22 Wall. 444; *Hunnewell v. Cass County*, 22 Wall. 464; *Colorado Co. v. Com'rs*, 95 U. S. 259; *Witherspoon v. Duncan*, 21 Ark. 240, 4 Wall. 210; *Bronson v. Kukuk*, 3 Dill. 490; *Northern Wis. R. Co. v. Supervisors*, 8 Biss. 414; *Ha'l v. Dowling*, 18 Cal. 619; *People v. Shearer*, 30 Cal. 645; *Central Pac. R. Co. v. Howard*, 51 Cal. 229; *Iowa Homestead Co. v. Webster County*, 21 Iowa 221; *Goodnow v. Wells*, 67 Iowa 654; *Barrett v. Kevane*, 100 Iowa 653; *Davis v. Magaun*, 109 Iowa 308; *State v. Hunter*, 42 Minn. 312; *Graff v. Ackerman*, 38 Neb. 720; *Puget Sound Agric. Co. v. Pierce County*, 1 Wash. Ter. 180; *Ross v. Outagamie County*, 12 Wis. 26; *Farnham v. Sherry*, 71 Wis. 508. If, previous to the passage of an act of congress confirming to a state certain lands long claimed by it, a tax is laid on such lands in the hands of grantees from the state, the confirming act makes the state's title relate to the time when the state claimed it, and makes the tax valid. *Litchfield v. Hamilton County*,

40 Iowa, 66. Railroad-grant lands are taxable as soon as earned: *Wisconsin Central R. Co. v. Price County*, 133 U. S. 496; *Dickerson v. Yetzer*, 53 Iowa 681; *Railroad Co. v. Morris*, 13 Kan. 302; *Elkhofn, etc. Co. v. Dixon County*, 35 Neb. 426; *Oregon & C. R. Co. v. Lane County*, 23 Or. 386; *West Wisconsin R. Co. v. Supervisors*, 35 Wis. 257; *Wisconsin Central R. Co. v. Comstock*, 71 Wis. 88. Unless some condition precedent is first to be performed: *White v. Railroad Co.*, 5 Neb. 393. See *Railway Co. v. Prescott*, 16 Wall. 603; *Railway Co. v. Trempealeau Co.*, 93 U. S. 595; *Northern Pac. R. Co. v. Traill County*, 115 U. S. 600; *State v. Central Pac. R. Co.*, 20 Nev. 372; *Wells County v. McHenry*, 7 N. D. 246. Land granted in aid of a railroad is taxable, although the company has failed to pay the entry fee: *Price v. Lancaster County*, 20 Nev. 252. Lands granted to a railroad company were held after selection by the grantee to be subject to state taxation without further action of the secretary of the interior, and without being patented: *New Orleans Pac. R. Co. v. Kelly*, 52 La. An. 1741. Place lands of a railroad are taxable after they have been surveyed in the field, although the plat has not been filed in the local land office: *Wells County v. McHenry*, 7 N. D. 246. That some of the lands in a railroad grant may turn out to be mineral lands, so as to be excepted from the grant, will not preclude the state's taxing the grant even though the question of its non-mineral character is not yet settled: *Central Pac. R. Co. v. Nevada*, 162 U.

any case until the right to a patent is complete, and the equitable title fully vested in the party without anything more to be paid or any act to be done, going to the foundation of the right.¹ Nor will it apply where, as one of the conditions of

S. 512; *State v. Central Pac. R. Co.*, 21 Nev. 247; *Northern Pac. R. Co. v. McGinnis*, 4 N. D. 494; *Northern Pac. R. Co. v. Walker*, 47 Fed. Rep. 681; *Northern Pac. R. Co. v. Wright*, 51 Fed. Rep. 68, 54 Fed. Rep. 67. As to when land is "contracted to be sold" by a railroad company so as to subject it to state taxation, see *St. Paul & S. C. R. Co. v. Robinson*, 40 Minn. 360. Where public lands held by the state in trust for the United States are erroneously granted to a railroad, a sale thereof under an assessment for taxes against the railroad is void: *Sullivan v. Van Kirk L. & C. Co.*, 124 Ala. 225. "Railroad land-grant" lands reserved and retained by the state, and subsequently sold by it, are subject to taxation in the hands of its grantees, and none but the United States can question the state's authority to dispose of them: *Morrison County v. St. Paul & N. P. R. Co.*, 42 Minn. 451. See *Cook Co. v. Auditor General*, 79 Mich. 100. Land entered with military bounty land warrants was held taxable from the time of entry: *Goddard v. Storch*, 57 Kan. 714. So with land purchased of the United States on a forged warrant which afterwards was exchanged for money: *Wheeler v. Merriman*, 30 Minn. 372. See *Vinton v. Cerro Gordo County*, 72 Iowa 155. Part-paid unpatented lands purchased from the United States on certain Indian reservations were held subject to state taxation as to the purchasers' interests: *Hagenbuck v. Reed*, 3 Neb. 17; *Edgington v. Cook*, 22 Neb. 551; *Logan v. Board of Com'rs*, 51 Kan. 747. But lands held by the United States in trust for an Indian tribe are not made tax-

able by the fact that an individual has bought them on contract without any payment: *Railroad Co. v. Morris*, 13 Kan. 302. Where a patent was issued for a whole section, three-quarters of which had already been patented, a release to the United States of the whole section by the patentee, followed by a re-entry and patent of the quarter not covered by the prior patent, did not destroy a title acquired at a tax sale of said quarter prior to the release: *Etting v. Gould*, 96 Mo. 535. Conditions precedent to avoid taxation where entry has been suspended: *Farnham v. Sherry*, 71 Wis. 568.

¹ *Railway Co. v. Prescott*, 16 Wall. 603; *Railway Co. v. McShane*, 22 Wall. 444; *Colorado Co. v. Com'rs*, 95 U. S. 259; *Northern Pac. R. Co. v. Traill County*, 115 U. S. 600; *Wisconsin Central R. Co. v. Price County*, 133 U. S. 496; *Hussman v. Durham*, 165 U. S. 144; *Stearns v. Minnesota*, 179 U. S. 223; *Diver v. Friedheim*, 43 Ark. 203; *Kohn v. Barr*, 52 Kan. 269; *Durham v. Hussman*, 88 Iowa 29; *Pitts v. Clay*, 27 Fed. Rep. 635. Indemnity lands of the Northern Pacific Railroad Company are not taxable until the selection thereof has been approved by the secretary of the interior: *Wisconsin Central R. Co. v. Price County*, *supra*; *State v. Sage*, 75 Minn. 448; *Jackson v. La Moure County*, 1 N. D. 238; *Wells County v. McHenry*, 7 N. D. 246. See *State v. Central Pac. R. Co.*, 20 Nev. 372. Where one of the conditions of a grant of land to a railroad company was that the cost of the government surveys, selections, etc., should be prepaid by the grantee before the lands should be conveyed,

the grant, the lands not sold by the grantee within a time named are to be open to pre-emption and settlement like any portion of the public domain,¹ or where congress has expressly enacted that land shall be exempt from state taxes until a certain time after issue of patent.² Land confirmed to a private owner under a treaty with a foreign country becomes taxable when, by treaty or statute, the title passes, and not before;³ and until a Spanish grant has been segregated from the public domain by properly approved survey, it is not subject to state taxation.⁴ If congress grants authority to the states to tax railroad-grant lands, the title to which is still in the United States, it may impose such conditions as it deems proper, and a state must proceed, if it proceeds at all, in accordance with

the state could not tax the land until such payment had been made: *Railway Co. v. Prescott*, 16 Wall. 603; *Northern Pac. R. Co. v. Traill County*, 115 U. S. 600. As to surveyed lands the rule was changed by act of congress in 1886: *State v. Central Pac. R. Co.*, 20 Nev. 372; 21 Nev. 247, 260; but not as to lands unsurveyed: *State v. Central Pac. R. Co.*, 21 Nev. 94. And see *Cass County v. Morrison*, 28 Minn. 257; *Northern Pac. R. Co. v. Myers*, 172 U. S. 589. Where the first proof under an entry of government land is rejected and new proof is made, on which patent is issued, the land does not become taxable by the state prior to the making of the second proof: *Duncan v. Newcomer*, 9 S. D. 375. Land taken up under the federal homestead law is not taxable until the proofs are made which entitle the occupant to a patent: *Long v. Culp*, 14 Kan. 412; *Chase County Com'rs v. Shipman*, 14 Kan. 532; *Hoskins v. Illinois Central R. Co.* (Miss.), 29 South. Rep. 518. Or at least until he is entitled to make such proofs: *Bellinger v. White*, 5 Neb. 399; *Moriarty v. Boone County*, 39 Iowa 634. After a "final certificate" issues to a homesteader on the public domain, and before the patent issues, his

land becomes taxable: *Burcham v. Terry*, 55 Ark. 398. And see, in general, *McGregor, etc. R. Co. v. Brown*, 39 Iowa 655; *Doe v. Railroad Co.*, 54 Iowa 657; *Grant v. Railroad Co.*, 54 Iowa 673; *Reynolds v. Plymouth County*, 55 Iowa 90; *Davis v. Magoun*, 109 Iowa 308; *Donovan v. Kloeke*, 6 Neb. 124; *Central, etc. R. Co. v. Howard*, 52 Cal. 228; *Bronson v. Kukuk*, 3 Dill. 490; *Hunnewell v. Cass County*, 22 Wall. 464; *Colorado Co. v. Com'rs*, 95 U. S. 259; *Litchfield v. Webster County*, 101 U. S. 773.

¹ *Railway Co. v. Prescott*, 16 Wall. 603. Compare *Tucker v. Ferguson*, 22 Wall. 527.

² *Churchill v. Sowards*, 78 Iowa 472.

³ *Colorado Co. v. Com'rs*, 95 U. S. 259; *Com'rs v. Improvement Co.*, 2 Colo. 628. See *Puget Sound Agric. Co. v. Pierce County*, 1 Wash. 159.

⁴ *Robertson v. Sewell*, 87 Fed. Rep. 536, 34 C. C. A. 107. An objection to the taxation of land that such land is an unconfirmed Mexican grant was not sustained where it was not shown that such grant was not a perfect one the equitable title to which was vested in the taxpayer, or that the land was not in his possession and covered with valuable improvements: *Maish v. Arizona*, 164 U. S. 193.

those conditions. The grant of such authority being beneficial, acceptance thereof will be presumed; and state tax laws which would have been applicable to unpatented railroad-grant lands but for the fact that under the national laws the taxation of such lands was not permitted, need not be re-enacted to render them operative when an act allowing such taxation has been passed.¹

7. *Occasional Agencies.* Railroads owned and controlled by private corporations are in a certain sense public conveniences and agencies, but they constitute no branch or part of the government, either state or national, and are not properly governmental agencies, even though the government may employ them for the transportation of its troops, its mails, etc., or for other purposes. The corporations owning them are consequently entitled to claim no exemption based on any implication that they are essential to the operations of the government. They are therefore taxable as natural persons would be whom the government might employ for the performance of similar services.² Congress has power to exempt from taxation the right of way through the public domain of a railroad corporation chartered by it, the corporation being in a sense

¹ State v. Central Pac. R. Co., 21 Nev. 247; Central Pac. R. Co. v. Nevada, 162 U. S. 512.

² Thomson v. Pacific R. Co., 9 Wall. 579; Central, etc. R. Co. v. Board of Equal, 60 Cal. 35. Compare People v. Central Pac. R. Co., 43 Cal. 398; Huntington v. Central Pac. R. Co., 2 Sawy. 503; Inhabitants of Worcester v. Western R. Corp., 4 Met. 564, 568; Boston & Me. R. Co. v. Cambridge, 8 Cush. 237. But a franchise conferred by congress upon a railroad company cannot, without its permission, be taxed by a state: California v. Central Pac. R. Co., 127 Cal. 1. And where such a company has a franchise from the United States, an ordinance requiring it to take out a license in order to continue its business in a county, carrying persons or freight for hire, is void as a tax upon the use of such franchise: San Be-

nito County v. Southern Pac. R. Co., 77 Cal. 518. In the case of a railroad company chartered by congress, and in which the federal government has important interests with some power of control, the states cannot tax the operations of the road, though they may tax the property: Union Pac. R. Co. v. Peniston, 18 Wall. 5. Where a railroad company having a state franchise subsequently secures a federal one, it may still be taxed as to the former: People v. Central Pac. R. Co., 105 Cal. 576. Such state franchise is taxable by the state, although it is subject to a mortgage to the United States: Central Pac. R. Co. v. California, 162 U. S. 91. The right to tax a railroad company is not affected by the fact that its property is mortgaged to the United States: Thomson v. Pacific R. Co., 9 Wall. 579.

an instrumentality of the government;¹ and a grant of such right of way with such exemption excludes the right of a territory to tax superstructures that are not personalty.²

Because an act of congress authorizes the construction of a bridge across a navigable river, giving the right to build a railroad and to take tolls, and declares that such bridge shall be regarded as a post-road, it does not preclude the taxing power of the state from extending to such bridge as well for local as for state purposes.³

Telegraph companies which have acquired under the federal statutes the right to construct and maintain lines along any military or post-roads of the United States, or over the public domain, are not thereby exempted from state taxation upon their property within the state,⁴ though such a company cannot be required to pay a license tax as a condition of transmitting messages between different states,⁵ or be taxed by the

¹ Northern Pac. R. Co. v. Carland, 5 Mont. 146.

² United States Trust Co. v. Atlantic & P. R. Co., 8 N. M. 673. A bridge owned by the United States over which a railroad has a right of passage as over its own track, by reason of its paying half the cost of building, is not taxable: Chicago, etc. R. Co. v. Davenport, 51 Iowa 451.

³ Henderson Bridge Co. v. Henderson, 141 U. S. 679; Henderson Bridge Co. v. Kentucky, 166 U. S. 150; St. Joseph & G. I. R. Co. v. Steele, 167 U. S. 659; Keokuk & H. Bridge Co. v. Illinois, 176 Ill. 267, 175 U. S. 626.

⁴ Western Union Tel. Co. v. Massachusetts, 125 U. S. 530; Attorney-General v. Western Union Tel. Co., 141 U. S. 40, 33 Fed. Rep. 129; Telegraph Co. v. Adams, 155 U. S. 688; Western Union Tel. Co. v. Taggart, 163 U. S. 1, 141 Ind. 281; Southern Bell, etc. Tel. Co. v. Richmond, 78 Fed. Rep. 858; Western Union Tel. Co. v. Commonwealth, 110 Pa. St. 405; Western Union Tel. Co. v. Richmond, 26 Grat. 1; People v. Terney, 57 Hun 357. See Francisco v. Western Union Tel. Co., 96 Cal. 140. *A fortiori* a tele-

graph company, even though it has accepted the provisions of the federal statutes, is not exempt from state taxation for such part of its line in the state as is not built over or along a military or post road of the United States: Ratterman v. Western Union Tel. Co., 127 U. S. 411. And notwithstanding U. S. Rev. Stat. 5263, municipal corporations may subject telegraph companies to reasonable charges for the use of streets by the erection of telegraph poles and wires: St. Louis v. Western Union Tel. Co., 148 U. S. 92. See Philadelphia v. Western Union Tel. Co., 82 Fed. Rep. 797; Philadelphia v. Western Union Tel. Co., 67 Hun 21.

⁵ *Leloup v. Port of Mobile*, 127 U. S. 640. A license tax imposed by a city upon telegraph companies "for business done exclusively within the city . . . and not including any business done to or from points without the state" or "for the United States," was upheld in *Western Union Tel. Co. v. Charleston*, 56 Fed. Rep. 419; *Postal Tel. Cable Co. v. Charleston*, 153 U. S. 692.

state on messages and receipts therefrom between points within and points without the state.¹ And while such a company can be taxed for its property within a state in proportion to the length of its lines within the state as compared with the entire length of its lines,² the statute providing for such taxation is void in so far as it provides for the issue of injunctions to restrain the company from transacting any business until delinquent taxes are paid.³

S. Special Privileges. It is not competent for the states to tax the incorporeal rights which the laws of the United States confer upon authors and inventors.⁴ Were it possible to exert the taxing power against patents and copyrights the purposes of the national constitution might easily be defeated. Therefore a state statute declaring that all itinerant persons vending patent rights should be deemed peddlers, and imposing a license tax upon peddlers, which for vendors of patent rights was double the amount required of others, was held void as a taxation of a privilege granted by the United States.⁵ Capital stock of a corporation invested in or issued for patents or patent rights has been held not taxable by a state;⁶ and it has also

¹ *Western Union Tel. Co. v. Seay*, 132 U. S. 472. See *Telegraph Co. v. Texas*, 105 U. S. 460. A telegraph company chartered in another state is taxable in Pennsylvania upon its gross receipts from business carried on within the state: *Western Union Tel. Co. v. Commonwealth*, 110 Pa. St. 405.

² *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530; *Attorney-General v. Western Union Tel. Co.*, 33 Fed. Rep. 129, 141 U. S. 40; *Western Union Tel. Co. v. Taggart*, 141 Ind. 281, 163 U. S. 1.

³ *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530. See *In re Pennsylvania Tel. Co.*, 48 N. J. Eq. 91.

⁴ *Webber v. Virginia*, 103 U. S. 344; *In re Sheffield*, 64 Fed. Rep. 833; *People v. Board of Assessors*, 156 N. Y. 417; *People v. Roberts*, 159 N. Y. 70. In the case of *Crown Cork, etc. Co. v. State*, 87 Md. 687, it is said that a

state tax upon patent rights themselves is not forbidden by the constitution of the United States; but neither does that instrument forbid—in so many words—state taxation of national post-offices and battleships.

⁵ *In re Sheffield*, 64 Fed. Rep. 833.

⁶ *Commonwealth v. Westinghouse Electric, etc. Co.*, 151 Pa. St. 265; *Commonwealth v. Philadelphia Co.*, 157 Pa. St. 527; *Commonwealth v. Edison Electric L. Co.*, 157 Pa. St. 529. But the issue of stock by a corporation to pay for the use of patented appliances is not such an investment in patent rights as to relieve it from the operation of the tax laws of the state: *Commonwealth v. Central Dist. etc. Tel. Co.*, 145 Pa. St. 121; *Commonwealth v. Brush Electric Light Co.*, 145 Pa. St. 147. In New Jersey it is held that a tax on a corporation which is a franchise and not a property tax is not subject

been decided that copyrights cannot be considered in determining the privilege tax on a foreign corporation which a state law provides shall be computed on the basis of the capital employed by it in the state.¹ But as letters patent do not exclude from the operation of the tax or license law of the state the tangible property in which the invention or discovery is embodied,² it is competent for a state to require the vendor of a patented article to take out a license,³ and the patented article itself may be taxed at "its true value in money" though that value is enhanced by the value of the patent.⁴ So, too, in the case of copyrights, the tangible property which is produced under the protection of the exclusive right granted by the federal government—plates, books, etc.—is subject to taxation by the state.⁵

Taxes on commerce: *Imports and Exports.* The federal constitution provides that "No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States."⁶ The inspection

to diminution because some of the capital is invested in letters patent of the United States: *Marsden Co. v. Board of Assessors*, 61 N. J. L. 461. See *People v. Wemple*, 61 Hun 53. Under a statute providing that every domestic corporation shall pay an annual tax upon the value of its capital stock employed within the state, a company conveying to various companies outside of the state the right to use its patents, and receiving payment therefor in the stock of such companies, is a mere investor in such stock, and the capital thus invested is not exempt: *People v. Wemple*, 63 Hun 444, following *United States v. American Bell Tel. Co.*, 29 Fed. Rep. 44. In Maryland it is held that in fixing the taxable value of shares of stock so as to ascertain the amount of a tax

against the owners thereof, there can be no diminution because the corporation's assets include patent rights granted by the federal government: *Crown Cork, etc. Co. v. State*, 87 Md. 687.

¹ *People v. Roberts*, 159 N. Y. 70.

² *Webber v. Virginia*, 103 U. S. 344; *State v. Halliday*, 61 Ohio St. 352.

³ *Webber v. Virginia*, 103 U. S. 344; *Webber v. Commonwealth*, 33 Grat. 898. To require a license tax for the sale of an article manufactured out of the state under a patent, and none for the sale of an article so manufactured in the state, is an unlawful discrimination, and void: *Patterson v. Kentucky*, 97 U. S. 501.

⁴ *State v. Halliday*, 61 Ohio St. 352.

⁵ *People v. Board of Assessors*, 156 N. Y. 417.

⁶ Art. I, § 10.

fees which may properly be imposed under this clause are in no sense a duty on imports or exports, but are a compensation for services;¹ and the net produce of charges nominally made for inspection is for the United States only when they are imposed for revenue purposes.² A charge for inspection will be void as constituting a regulation of commerce if it applies only to an article brought into the state from one or more others named, and not from all;³ or if it applies to an article, such as flour, brought into the state, but not to the same article manufactured in the state.⁴

The provision of the constitution above recited has no application to articles transported merely from one state into another.⁵ Articles imported from foreign countries and the duties

¹ *Patapsco Guano Co. v. Board of Agric.*, 52 Fed. Rep. 690, 171 U. S. 345. In this case it was held that a state statute imposing an inspection tax of twenty-five cents per ton on fertilizers is not so excessive as to render the act a mere levying law, objectionable as an unwarrantable interference with interstate commerce. The charges imposed on vessels by the Louisiana quarantine laws are exactions in compensation for services rendered, and are not taxes, duties or imposts within the prohibition of the national constitution: *Morgan's L. & T. R. & S. S. Co. v. Board of Health*, 36 La. An. 666, 118 U. S. 455. A state statute providing for the inspection by the local authorities of fresh meat offered for sale at places one hundred miles or more distant from the place of slaughter was held, because of the onerous inspection fee of one cent per pound, to go far beyond the purpose of legitimate inspection to determine quantity and quality: *Brimmer v. Rebman*, 138 U. S. 78.

² *Padelford v. Mayor*, 14 Ga. 438. See *Turner v. State*, 55 Md. 240, 107 U. S. 38; *Addison v. Saulnier*, 19 Cal. 82; *Vanmeter v. Spurrier*, 94 Ky. 22; *State v. Caraleigh, etc. Works*, 119

N. C. 120. A state statute declaring that no commercial fertilizers shall be sold or offered for sale until the manufacturer or importer shall obtain a license from the state treasurer, for which shall be paid a license fee of \$500 per annum for each brand, and appropriating the proceeds of such tax to an industrial association and other purposes, is void: *American Fertilizing Co. v. North Carolina Board of Agric.*, 48 Fed. Rep. 609. A state inspection law imposing a charge which it declares to be for defraying the cost of inspection will not be held unconstitutional as an unwarranted tax on interstate commerce because some of the revenues derived therefrom has in fact been applied to other purposes: *Patapsco Guano Co. v. Board of Agric.*, 171 U. S. 345.

³ *Higgins v. Casks of Lime*, 130 Mass. 1.

⁴ *Voight v. Wright*, 141 U. S. 62.

⁵ *Brown v. Maryland*, 12 Wheat. 419; *Woodruff v. Parham*, 8 Wall. 123; *Hinson v. Lott*, 40 Ala. 123, 8 Wall. 148; *Brown v. Houston*, 33 La. An. 843, 114 U. S. 622; *Coe v. Errol*, 116 U. S. 517; *Standard Oil Co. v. Combs*, 96 Ind. 179; *Pittsburg & S. Coal Co. v. Bates*, 40 La. An. 226; *State v.*

paid thereon do not lose their character as imports, so as to become subject to state taxation as a part of the mass of property of the state, until they have either passed from the control of the importer or been broken up by him from the original cases;¹ and a state tax is void whether imposed upon them distinctively as imports or as constituting a part of the importer's property.² And a license tax imposed on the importer as such is in effect a tax on imports, and therefore forbidden.³ So is a tax on an auctioneer measured by the amount of goods sold, so far as it applies to imports sold for the importer in the original packages.⁴ But a tax on premiums received for invoicing imports, though they still remain in the bonded warehouse, is not to be deemed a tax on imports.⁵ A tax on a

Bixman (Mo.), 62 S. W. Rep. 828; *Pierce v. State*, 13 N. H. 536; *State v. Pinckney*, 10 Rich. 478.

¹ The box, case, or bale in which the separate parcels or bundles were placed by the foreign seller, manufacturer, or packer, is to be regarded as the original package; and when it reaches its destination for trade or sale and is opened for the purpose of using or exposing to sale the separate parcels or bundles, the goods lose their distinctive character as imports, and each parcel or bundle becomes a part of the general mass of property in the state and subject to local taxation: *May v. New Orleans*, 178 U. S. 496, 51 La. An. 1064. As to what constitutes an original package, see, also, *Austin v. Tennessee*, 179 U. S. 343, and cases cited; *State v. Parsons*, 124 Mo. 436.

² *Low v. Austin*, 13 Wall. 29; citing *Brown v. Maryland*, 12 Wheat. 419; *License Cases*, 5 How. 575. See *State v. Board*, 46 La. An. 145. An importer cannot be taxed with reference to the uncollected price of goods sold by him in the unbroken packages in which they were imported: *Gelpi v. Schenck*, 48 La. An. 1535.

³ *Brown v. Maryland*, 12 Wheat. 419. A state statute requiring all

merchants to pay "as a license tax one-tenth of one per centum on the total amount of purchases in or out of the state (except purchases of farm products), for cash or on credit," does not operate as a tax upon imports or exports, within the constitutional prohibition: *Ex parte Brown*, 48 Fed. Rep. 435.

⁴ *Cook v. Pennsylvania*, 97 U. S. 566.

⁵ *People v. National Fire Ins. Co.*, 27 Hun 188. It was held in *Almy v. California*, 24 How. 169, that a state stamp tax on a bill of lading for the transportation of gold and silver from any point within the state to any point without the state was a tax on exports, and therefore inadmissible. The bill in question was drawn for a carriage from one of the states to another; and it was justly said by Mr. Justice Miller in *Woodruff v. Parham*, 8 Wall. 123, 137, that "it seems to have escaped the attention of counsel on both sides and of the chief justice who delivered the opinion that the case was one of interstate commerce." The case is not reconcilable with the last mentioned, and though followed as authority in *Brumagim v. Tillinghast*, 18 Cal. 265, has since the decision of *Woodruff v. Parham* been regarded as overruled. In *Ex parte Martin*, 7

corporate franchise to be computed on dividends is not held invalid as a tax upon the importation in their original packages of goods manufactured or imported by the corporation;¹ nor is a state tax on the capital employed in manufacturing of a corporation which sells goods manufactured outside of the state, within the prohibition against a state's taxing imports or regulating interstate commerce.²

An article of commerce which has been purchased by the subject of a foreign country for export, and in the hands of his agent in port awaiting shipment, is to be regarded as an export, and therefore, under this provision of the constitution, not taxable by the state.³ But a general tax laid by a state upon all property alike cannot be construed as a duty on exports when it falls upon goods not then intended for exportation but which afterwards happen to be exported.⁴

Tonnage Duties. The same clause of the constitution forbids the states to lay any duty of tonnage without the consent of congress. Notwithstanding this prohibition, vessels are taxable as property in the same manner as other property is taxed;⁵ but taxes levied by a state upon ships and vessels as instruments of commerce and navigation are forbidden; and it makes no difference whether the ships or vessels taxed belong to the citizens of the state which levies the tax or to citizens of another state, as the prohibition is general, withdrawing altogether from the states the power to lay any duty of tonnage under any circumstances without the consent of congress.⁶

Nev. 140. a state stamp tax on a bill of exchange drawn in one state and payable in another was sustained.

¹ *People v. Roberts*, 158 N. Y. 162, 171 U. S. 658.

² *People v. Roberts*, 158 N. Y. 168.

³ *Blount v. Monroe County*, 60 Ga. 61; *Clarke v. Clarke*, 3 Woods 405. But the fact that cattle received by dealers were purchased for export does not constitute them exports so as not to be liable to taxation: *Myers v. County Com'rs*, 83 Md. 385.

⁴ *Brown v. Houston*, 114 U. S. 622. Here coal was sent by its Pennsylvanian owners to their agents in New

Orleans to be there sold for their account, and some of it was subsequently sold for export.

⁵ *State Tonnage Tax Cases*, 12 Wall. 204, 213; *Transportation Co. v. Wheeling*, 9 W. Va. 170; s. c. in error, 99 U. S. 273; *The North Cape*, 6 Biss. 505; *Guenther v. Baltimore*, 55 Md. 459; *People v. Com'rs of Taxes*, 58 N. Y. 242.

⁶ *State Tonnage Tax Cases*, 12 Wall. 204, 213; citing *Gibbons v. Ogden*, 9 Wheat. 202; *Sinnot v. Davenport*, 22 How. 238; *Foster v. Davenport*, 22 How. 245; *Perry v. Torrence*, 8 Ohio, 524. See, also, *Sheffield v. Parsons*,

Nor is it important that the vessel is engaged exclusively in navigating the waters of the state which taxes it.¹ A duty of tonnage, in the most obvious and general sense, is a duty measured by the capacity or size of the ship or vessel on which it is laid;² but other duties may be within the intent of this prohibition, if they are laid on the vessel as an instrument of commerce, and even though not laid for the benefit of the state itself, but as fees for officers. A fixed sum of \$5, required to be paid to the masters and wardens of a port for every vessel arriving, whether they performed, in respect to it, any service or not, has been held a duty of tonnage;³ and it has been well said that "the tax, instead of being called a tax on the vessel, may be called a tax upon the master or upon the cargo, or upon some privilege to be enjoyed by the vessel; as the privilege of coming into a certain port, or of riding at a particular anchorage, or of being served, as she may have occasion, by the wardens of a port, or the privilege of engaging in a particular trade — as the trade in wood, in corn or in oysters — yet if really and substantially it is a duty of tonnage, it is equally within the prohibition as if the tax had been called by its right name."⁴

Nor is it important that the duty is imposed as a means of enforcing some authority which unquestionably belongs to the state; such as the power to establish quarantine regulations.⁵

3 Stew. & Port. 302; Harbor Master v. Railroad Co., 3 Strob. 594; State v. Charleston, 4 Rich. 286; Lott v. Morgan, 41 Ala. 246; Johnson v. Drummond, 20 Grat. 419; Hays v. Steamship Co., 17 How. 596; Steamship Co. v. Portwardens, 6 Wall. 31; Cannon v. New Orleans, 20 Wall. 577; Inman Steamship Co. v. Tinker, 94 U. S. 238; Harmon v. Chicago, 147 U. S. 396; New Orleans v. Eclipse Tow Boat Co., 33 La. An. 647; Harbor Com'rs v. Pashley, 19 S. C. 315.

¹ State Tonnage Tax Cases, 12 Wall. 204, 219, 225; Harmon v. Chicago, 147 U. S. 396; Lott v. Morgan, 41 Ala. 246. Vessels employed in a harbor as lighters are within the protec-

tion of this clause: Lott v. Morgan, *supra*.

² State Tonnage Tax Cases, 12 Wall. 204, 225; Steamship Co. v. Portwardens, 6 Wall. 31; Johnson v. Drummond, 20 Grat. 419, 423.

³ Steamship Co. v. Portwardens, 6 Wall. 31. A license fee imposed on corporations running tow boats to and from the Gulf of Mexico was held not to be a tonnage tax in Louisiana: New Orleans v. Eclipse Tow Boat Co., 33 La. An. 647.

⁴ Johnson v. Drummond, 20 Grat. 419-424.

⁵ Peete v. Morgan, 19 Wall. 581; Johnson v. Drummond, 20 Grat. 419, 424; Morgan's R. Co. v. Board of Health, 36 La. An. 666.

A state may erect wharves and charge wharfage for their use; and a city may do the same and measure the charge by tonnage;¹ but a state cannot make a wharfage charge to a vessel coming from another state when it makes none to vessels coming from ports in its own state.² Nor can it discriminate in the fees between boats coming through canals within or without the state.³ A state act which, with certain exceptions, requires that all ships or vessels which enter a port, or load or unload or make fast to any wharf therein, shall pay a certain rate per ton, does not impose a charge for wharfage, but a tonnage duty, and is therefore void.⁴ On the other hand, a license

¹ *Packet Co. v. Catlettsburg*, 105 U. S. 559. See *Cannon v. New Orleans*, 20 Wall. 577; *Parkersburg & O. R. Transp. Co. v. Parkersburg*, 107 U. S. 691. See *Leloup v. Port of Mobile*, 127 U. S. 640. A duty of tonnage is a charge for the privilege of entering or trading or lying in a port or harbor; wharfage is a charge for the use of a wharf: *Bradley, J.*, in *Transportation Co. v. Parkersburg*, 107 U. S. 691, 696. A state may authorize a city to collect a wharfage charge on all vessels touching at its own wharves: *Marshall v. Vicksburg*, 15 Wall. 146; *Steamship Co. v. Tinker*, 94 U. S. 238; *Packet Co. v. Keokuk*, 95 U. S. 80; *Packet Co. v. St. Louis*, 100 U. S. 423; *Vicksburg v. Tobin*, 100 U. S. 430; *Sweeny v. Otis*, 37 La. An. 520. The exaction of wharfage is not the laying of a duty of tonnage, and where an ordinance requires steamboats and other water craft to pay for the use of the wharves, and no demand is made for entering, loading or lying in the harbor or port, such charges will not be considered as a duty of tonnage, but of wharfage: *Ouachita & M. R. T. Co. v. Aiken*, 16 Fed. Rep. 890. The fact that wharfage charges collected by a city for the use of its wharf and which are regulated by the tonnage of the vessel are exorbitant in amount, will not render the collection thereof a tonnage tax pro-

hibited by the federal constitution: *Parkersburg & O. R. Transp. Co. v. Parkersburg*, 107 U. S. 691.

² *Guy v. Baltimore*, 100 U. S. 434. A state statute requiring all vessels to pay a fee for examination as to their sanitary condition when they pass the quarantine station is not objectionable as giving a preference for a port of one state over ports of another: *Morgan's L. & T. R. & S. S. Co. v. Board of Health*, 118 U. S. 455.

³ *The John M. Welch*, 18 Blatch. 54.

⁴ *Northwestern U. P. Co. v. St. Paul*, 3 Dill. 454; *Inman Steamship Co. v. Tinker*, 94 U. S. 238. On the general subject see, further, *Southern Exp. Co. v. Mayor*, 49 Ala. 404; *Lott v. Trade Co.*, 53 Ala. 570; *Lott v. Cox*, 43 Ala. 697. That wharfage fees can be charged only when the proprietor has constructed works at his own expense which afford facilities to vessels loading and unloading, see *New Orleans v. Wilmot*, 31 La. An. 65. This applies to towns also, and the town must have legislative authority to impose such a charge. And the charge must be fixed in advance, though it seems it may be graded by tonnage: *Muscatine v. Packet Co.*, 45 Iowa 185; *Keokuk v. Packet Co.*, 45 Iowa 196. See, further, *N. W. Packet Co. v. St. Louis*, 4 Dill. 10. That the states, in the absence of any legislation by congress on the subject, may

fee required of those operating ferry-boats is not a tonnage tax, even though the boats ply between different states.¹ Neither is a toll imposed for the use of a state improvement of navigable waters,² or a toll imposed on the carriage of freight by railroads.³

Foreign and Interstate Commerce, etc. The federal constitution also provides that congress shall have power "To regulate commerce with foreign nations, and among the several states and with the Indian tribes."⁴ This constitution, and the laws and treaties made in pursuance thereof, being supreme over all the states, any exercise of state power, whether by taxation or otherwise, in conflict therewith must be void.

In most respects this power over commerce is exclusive to the extent to which it is conferred; so that a regulation by a state of foreign or interstate commerce, or commerce with Indians still maintaining their tribal relations, would be void.⁵

prescribe wharfage charges and regulate the subject generally, see *Cooley v. Board of Wardens*, 12 How. 299; *Transportation Co. v. Wheeling*, 99 U. S. 273; *Packet Co. v. St. Louis*, 100 U. S. 423; *Guy v. Baltimore*, 100 U. S. 434; *Packet Co. v. Catlettsburg*, 105 U. S. 559.

¹ *Wiggins Ferry Co. v. East St. Louis*, 107 Ill. 560; s. c. in error, 107 U. S. 365. See *Conway v. Taylor*, 1 Black 603; *Chilvers v. People*, 11 Mich. 43; *Marshall v. Grimes*, 41 Miss. 27; *Fanning v. Gregoire*, 16 How. 524; *Commonwealth v. Gloucester Ferry Co.*, 98 Pa. St. 105.

² *Huse v. Glover*, 15 Fed. Rep. 292, 119 U. S. 543; *Palmer v. Cuyahoga Co.*, 3 McLean 226; *Thames Bank v. Lovell*, 18 Conn. 500; *Nelson v. Cheboygan Nav. Co.*, 44 Mich. 7. See *Sands v. Manistee River Imp. Co.*, 123 U. S. 288. The Ordinance of 1787 declaring that navigable waters shall be forever free does not incapacitate a state from levying tonnage duties for a canal and dam it has constructed in improving a river: *Huse v. Glover*, *supra*. And the fact that a surplus not used in keeping the

locks in repair or in collecting tolls goes into the state treasury does not alter the character of the toll as a compensation and not a tax: *Ibid*. The exaction by a city of a license fee from a steam tug engaged in bringing vessels from one of the great lakes into a navigable river cannot be supported upon the ground that the city has from time to time expended money in deepening the river, when the ordinance does not profess to require the license fee on any such ground, and no suggestion is made that any such benefit has arisen or can arise to such tugs by such deepening of the river: *Harmon v. Chicago*, 140 Ill. 374, 147 U. S. 396.

³ *Pennsylvania R. Co. v. Commonwealth*, 3 Grant 128. This case was reversed in the federal supreme court, but upon another ground. See *Case of the State Freight Tax*, 15 Wall. 232.

⁴ U. S. Const., art. I, § 8, par. 3. Commerce between a state and a territory is commerce "among the several states:" *Stoutenburg v. Henrick*, 129 U. S. 141.

⁵ *Brown v. Maryland*, 12 Wheat.

But in other respects state power is only excluded to the extent that congress sees fit by its legislation to occupy the field; and therefore state regulations will be admissible and valid unless expressly annulled by congress, or unless they conflict with federal legislation. Such is the case with state regulations of ports, and of the subject of pilotage and wharfage; these are to be deemed local regulations of police, and will be valid unless they are superseded by congressional legislation, or unless they are void for some other reason.¹ So a state may confer the right to construct a ship canal and to levy tolls, congress not having legislated concerning the matter.² But the cases to which this principle applies are few and of minor importance. A tax distinctly laid on the commerce that comes under the regulation of congress³ is void, even though congress has refrained from legislating on the subject.⁴ And a tax is laid upon commerce when importers, as such, are required to pay a license or other tax;⁵ the principle being that, when

419: *State Freight Tax*, 15 Wall. 232; *Welton v. Missouri*, 91 U. S. 275; *Cook v. Pennsylvania*, 97 U. S. 566.

¹ See *Cooley v. Board of Wardens*, 12 How. 299; *Mobile County v. Kimball*, 102 U. S. 691; *Packet Co. v. Catlettsburg*, 105 U. S. 599. They will be void if they discriminate for or against vessels coming from different states or by different routes. See *The John M. Welch*, 18 Blatch. 54.

² *Morris v. State*, 62 Tex. 728.

³ The business of insurance is not commerce, though carried on between citizens of different states, and therefore such business may be taxed by a state: *Liverpool, etc. Ins. Co. v. Massachusetts*, 10 How. 573. A statute imposing a privilege tax on agents in the state for laundries located in another state is not interference with interstate commerce, for such agents' transactions are not commerce: *Smith v. Jackson*, 103 Tenn. 673. Nor does a tax upon "emigrant agents," that is, persons engaged in hiring laborers in the state to be employed beyond the state's

limits, constitute such an interference: *Williams v. Fears*, 110 Ga. 584, 179 U. S. 270. See *Shepperd v. Sumter County*, 59 Ga. 535.

⁴ *McCulloch v. Maryland*, 4 Wheat. 316, 425; *Brown v. Maryland*, 12 Wheat. 419, 437; *Leloup v. Port of Mobile*, 127 U. S. 640; *Lyng v. Michigan*, 135 U. S. 161. The act of congress of August 2, 1886, defining butter, and imposing a tax upon, and regulating the manufacture and sale of, oleomargarine, was not intended as a regulation of interstate commerce, or to interfere with state exercise of authority over the sale of oleomargarine: *Plumley v. Massachusetts*, 155 U. S. 461. The federal constitution will not invalidate a state tax upon a corporation having power to engage in foreign or interstate commerce unless it is actually engaged in such commerce: *Honduras Com. Co. v. State Board*, 54 N. J. L. 278.

⁵ *Brown v. Maryland*, 12 Wheat. 419; *Low v. Austin*, 13 Wall. 29; *American Fertilizer Co. v. Board of*

the burden of the tax falls on a thing which is the subject of taxation, the tax is to be considered as laid on the thing rather than on him who is charged with the duty of paying it into the treasury.¹

An importer's sales are exempt from state taxation because he purchases, by the payment of the duty, a right to dispose of the merchandise as well as to bring it into the country; and the tax, if it were admissible, would intercept the import, as an import, in the way to become incorporated with the general mass of property, and would deny it the privilege of becoming so incorporated until it should have contributed to the revenue of the state.² But the goods imported from other countries may be taxed by the state with other property when they have passed from the importer's hands, or have become a part of the general property of the state by the breaking up of the packages.³

Commerce between the states is not free whenever a commodity is, by reason of its foreign growth or manufacture, subjected by state legislation to discriminating regulations or burdens.⁴ So, a license fee exacted from dealers in goods not produced or manufactured in the state, before they can be sold from place to place within the state, is a tax upon the goods themselves, and inadmissible when no such fee, or one less burdensome, is exacted from those who deal in goods produced or manufactured in the state.⁵ This is applicable to intoxicat-

Agric., 43 Fed. Rep. 609. A tax upon auctioneers, measured by the amount of their sales, was held to be invalid as to sales by auction of imported goods, in the original package, the statute under which the tax was imposed making discrimination against imported as compared with domestic goods: *Cook v. Pennsylvania*, 97 U. S. 566.

¹ *Brown v. Maryland*, 12 Wheat. 419; *Welton v. Missouri*, 91 U. S. 275; *Cook v. Pennsylvania*, 97 U. S. 566; *Webber v. Virginia*, 103 U. S. 344; *Telegraph Co. v. Texas*, 105 U. S. 460, 465; *Fairbank v. United States*, 181 U. S. 283.

² *Waring v. Mayor*, 8 Wall. 110, 112,

citing *Brown v. Maryland*, 12 Wheat. 419, 448, and *Almy v. California*, 24 How. 169, 173. See *State v. Allmond*, 2 Houst. 612; *Hinson v. Lott*, 40 Ala. 123, 8 Wall. 148.

³ *Brown v. Maryland*, 12 Wheat. 419; *Pervear v. Commonwealth*, 5 Wall. 479; *Waring v. Mayor*, 8 Wall. 110; *Low v. Austin*, 13 Wall. 29. See *Kenny v. Harwell*, 42 Ga. 416.

⁴ *Webber v. Virginia*, 103 U. S. 344.

⁵ *Ward v. Maryland*, 12 Wall. 418; *Welton v. Missouri*, 91 U. S. 275; *Webber v. Virginia*, 103 U. S. 344; *Walling v. Michigan*, 116 U. S. 446; *In re Watson*, 15 Fed. Rep. 511; *Ex parte Hanson*, 28 Fed. Rep. 127; *Georgia Packing Co. v. Macon*, 60 Fed.

ing liquors, which are a legitimate subject of commerce; and discriminating burdens upon interstate commerce therein are invalid.¹ But a tax charge imposed equally on the products of the state imposing it and those introduced from other states is only an exercise of the taxing power of the state, and not a regulation of interstate commerce.²

Rep. 774; *State v. McGinnis*, 27 Ark. 362; *Ex parte Thomas*, *71 Cal. 204; *Ames v. People*, 25 Colo. 508; *Rodgers v. McCoy*, 6 Dak. 238; *Pacific Junction v. Dyer*, 64 Iowa 38; *Daniel v. Trustees of Richmond*, 78 Ky. 542; *State v. Scott*, 98 Tenn. 254; *State v. Willingham (Wyo.)*, 62 Pac. Rep. 197. A state statute requiring all flour brought into the state to be inspected, the owner to pay therefor, and providing a penalty for any person's selling such flour without the inspection, is discriminating, no such inspection being required for flour manufactured in the state, and is therefore unconstitutional as imposing a direct burden on interstate commerce: *Voight v. Wright*, 141 U. S. 62.

¹*Tiernan v. Rinker*, 102 U. S. 123; *Walling v. Michigan*, 116 U. S. 446; *Lyng v. Michigan*, 135 U. S. 161; *Ex parte Loeb*, 72 Fed. Rep. 557; *Pabst Brewing Co. v. Terre Haute*, 98 Fed. Rep. 330; *Minneapolis Brewing Co. v. McGillivray*, 104 Fed. Rep. 258. But one cannot complain of such a discriminating tax unless he so sells liquors as to be affected by the discrimination: *Tiernan v. Rinker*, 102 U. S. 123. See *Sydow v. Territory (Ariz.)*, 36 Pac. Rep. 214. A state statute requiring the inspection of all beer sold in the state, and exacting a fee largely in excess of the expense of such inspection, is not an interference with interstate commerce: *State v. Bixman (Mo.)*, 62 S. W. Rep. 828.

²*Hinson v. Lott*, 40 Ala. 123, 8 Wall. 148; *Robbins v. Taxing Dist.*,

120 U. S. 489; *Ex parte Hanson*, 28 Fed. Rep. 127. An ordinance of a city authorizing a tax upon sales at auctions was held to be applicable to products of other states than the one imposing the tax: *Woodruff v. Parham*, 8 Wall. 123. Where a state law levies a tax "upon all peddlers of sewing machines without regard to place of growth or produce of material or of manufacture," it does not discriminate in favor of citizens of the state which enacted it, and is valid: *Machine Co. v. Gage*, 9 Baxt. 510, 100 U. S. 676. Compare *Seymour v. State*, 51 Ala. 52. A state law which provides that sewing-machine companies, and wholesale and retail dealers in sewing machines, selling machines manufactured by companies that have not paid the tax required, shall pay a certain tax, is not unconstitutional as an attempt to discriminate against the products of other states: *Weaver v. State*, 89 Ga. 639. See *Singer Manuf. Co. v. Wright*, 97 Ga. 114. A state statute imposing a heavy occupation tax upon the vendors of certain specified publications, "or other publications of like character," being applicable to all persons whether residents of the state or not, is not a discrimination against the person or the property of the owners of the publications named, and is therefore not invalid as a regulation of interstate commerce: *Preston v. Finley*, 72 Fed. Rep. 850. A city order requiring all peddlers and drummers to pay a license tax is not void, as discriminating against the products of other

A state statute or municipal ordinance imposing a license tax upon persons selling goods by sample or catalogue, or soliciting orders for goods, is void as an interference with interstate commerce in so far as it applies to agents for non-resident owners or manufacturers of goods outside of the state;¹ but it

states, although, as a matter of fact, few of the residents of the city or state care to sell under it, so that in practice most of the revenue under it is derived from outsiders: *Ex parte Hanson*, 28 Fed. Rep. 127. A state revenue law imposing upon all merchants an "*ad valorem* tax upon the capital invested in their business equal to that levied upon taxable property," and which provides that the annual amount assessed against a merchant shall not be less than the average of his stock during the preceding year, is not a tax upon the goods, and not an interference with interstate commerce: *Oliver Finney Grocery Co. v. Speed*, 81 Fed. Rep. 408. In *State v. Goetze*, 43 W. Va. 495, and *In re Minor*, 69 Fed. Rep. 223, a statute providing that a certain license fee should be paid for selling cigarettes at retail was held void, as a regulation of interstate commerce, so far as it applied to cigarettes imported from another state in the original packages. But see *In re May*, 82 Fed. Rep. 422. It was held, *In re Wilson* (N. M.), 60 Pac. Rep. 73, that a statute imposing a license fee as a consideration upon which coal oil might be sold was void so far as applicable to sales in original packages by importers from other parts of the United States. As to what constitutes sufficient incorporation of goods with the mass of property in the district or state to exempt a license tax on the peddler of such goods from the operation of the interstate commerce law, see *Leisy v. Hardin*, 135 U. S. 100; *In re Wilson*, 19 D. C. 341. See, also, *ante*, p. 144.

¹ *Robbins v. Taxing Dist.*, 120 U. S. 489; *Asher v. Texas*, 128 U. S. 129; *Stoutenburg v. Hennick*, 129 U. S. 141; *McCall v. California*, 136 U. S. 104; *Brennan v. Titusville*, 153 U. S. 289; *Holder v. Aultman, etc. Co.*, 169 U. S. 81; *In re Kimmel*, 41 Fed. Rep. 775; *In re Rozelle*, 57 Fed. Rep. 155; *In re Flinn*, 57 Fed. Rep. 496; *State v. Lagarde*, 60 Fed. Rep. 186; *In re Mitchell*, 62 Fed. Rep. 576; *Aultman, etc. Co. v. Holder*, 68 Fed. Rep. 467; *Ex parte Hough*, 69 Fed. Rep. 330; *In re Tinsman*, 94 Fed. Rep. 648; *State v. Agee*, 83 Ala. 110; *Ex parte Murray*, 93 Ala. 78; *Wrought Iron Range Co. v. Johnson*, 84 Ga. 754; *McLaughlin v. South Bend*, 126 Ind. 471; *McClellan v. Pettigrew*, 44 La. An. 356; *Pegues v. Ray*, 50 La. An. 574; *Coit & Co. v. Sutton*, 102 Mich. 324; *Laurens v. Elmore*, 55 S. C. 477; *State v. Rankin*, 11 S. D. 144; *Hurford v. State*, 91 Tenn. 669; *Ex parte Holman*, 36 Tex. Crim. App. 255; *Talbutt v. State*, 39 Tex. Crim. App. 64; *Adkins v. Richmond*, 98 Va. 91; *Clements v. Caspar*, 4 Wyo. 494. A municipal license tax imposed on non-resident brokers selling merchandise by sample is unconstitutional as an interference with interstate commerce: *Stratford v. City Council*, 110 Ala. 619. A state statute requiring any one, not the grower, maker or manufacturer, selling goods within the state, to pay a license proportioned to the amount of his stock in trade, whether situated in the state or out of it, is a regulation of interstate commerce as applied to persons out of the state and selling by sample within it: *Corson v. Maryland*, 120 U. S. 502. One who takes out a li-

is not such an interference to require a license tax from one who as agent for a non-resident, or on his own account, sells goods which have already become incorporated with the general mass of property in the state.¹

A yearly franchise tax may be exacted as the price of the right and privilege of being a corporation by the state granting the franchise, no matter how the corporate property may be invested or employed, or where it may be situated, and even though the corporation may be engaged in interstate and foreign commerce.² And it has been held that a statute forbidding foreign corporations from keeping offices in the state unless on payment of a license tax does not as to a min-

cense required by statute and gives bond for payment of a percentage tax on his yearly commissions or charges, cannot afterwards escape payment of the tax on the ground that as his business for the year consisted entirely in taking orders for non-resident merchants, the tax would therefore be a burden on interstate commerce: *Ficklen v. Taxing Dist.*, 145 U. S. 1.

¹ *Emert v. Missouri*, 156 U. S. 296; *Hynes v. Briggs*, 41 Fed. Rep. 468; *Hall v. State*, 39 Fla. 637; *Price v. Atlanta*, 105 Ga. 358; *Duncan v. State* (Ga.), 39 S. E. Rep. 755; *Chrystal v. Macon*, 108 Ga. 27; *Racine Iron Co. v. McCommons*, 111 Ga. 536; *Rash v. Farley*, 91 Ky. 344; *People v. Sawyer*, 106 Mich. 428; *State v. Montgomery*, 92 Me. 433; *State v. Emert*, 103 Mo. 241; *State v. Snoddy*, 128 Mo. 523; *State v. Caldwell*, 127 N. C. 521; *Commonwealth v. Gardner*, 133 Pa. St. 284; *Kimmell v. State*, 104 Tenn. 184; *Croy v. Obion County*, 104 Tenn. 235; *In re Butin*, 28 Tex. App. 304. Where agents employed by non-residents were furnished by them with samples and sent orders obtained to their employers, who shipped from another state to the agents the goods ordered for delivery, a single sale by one of the agents of his sample did not alter the character of his occupation, so

as to deprive him of the protection of the interstate commerce law: *In re Houston*, 47 Fed. Rep. 539. Where a non-resident obtained from a resident an order for a portrait, the resident having the privilege of purchasing from the agent a frame from the stock in the state, there was no prosecution of interstate commerce so far as regarded the frame: *Chrystal v. Macon*, 108 Ga. 27. See, *contra*, *Laurens v. Elmore*, 55 S. C. 477. A statute imposing a license tax "on every itinerant who puts up lightning rods" imposes no burden on interstate commerce, and binds one acting as agent in the state for the sale of lightning rods manufactured in another state, and who puts up the rods without extra charge whenever the purchaser requests it: *State v. Gorham*, 115 N. C. 721. A statute requiring all persons desiring to peddle clocks to make proof before the court of quarter sessions of their good moral character, and to obtain a license, being general and reasonable, is a proper police regulation, and not in violation of the interstate commerce clause of the federal constitution: *Commonwealth v. Harmel*, 165 Pa. St. 89.

² *Honduras Com. Co. v. State Board*, 54 N. J. L. 278.

ing company violate interstate commerce, there being no attempt to prohibit the transportation or sale of the company's products in the state.¹ A state law exacting from all corporations doing business in the state a tax proportioned to the total amount of their capital stock, without regard to what part thereof is employed within the state, or to the amount or kind of business done there, imposes purely a franchise tax, and even as applied to a corporation engaged in bringing the products of other states into the state for sale cannot be considered as a tax upon interstate commerce.² So, a state franchise tax upon private corporations based upon the amount of capital employed by the corporation in the state is not affected by the character of the property in which the capital is invested, and, therefore, is not rendered illegal by the fact that such capital is employed in interstate or foreign commerce.³ The imposition by a state of a license or franchise tax upon a domestic manufacturing corporation which manufactures its special product in another state is not a regulation of commerce between the states.⁴ Nor is the fee imposed on corporations for filing articles which they must file before they can be legally incorporated or consolidated a tax upon interstate commerce, though they are engaged in such business, but it is rather a tax on the right to exist as a corporation.⁵ It has been decided that a state statute providing that contracts made in one state by a foreign corporation which has not paid the license fee prescribed by a statute of that state as a prerequisite to doing business therein is void as a regulation of commerce when applied to the business of a foreign corporation selling its wares in such state by itinerant agents.⁶

¹ *Pembina, etc. Co. v. Pennsylvania*, 125 U. S. 181.

² *Horn Silver Mining Co. v. People*, 143 U. S. 305. See *People v. Wemple*, 117 N. Y. 136.

³ *New York v. Roberts*, 171 U. S. 658; *People v. Wemple*, 131 N. Y. 64.

⁴ *Standard Underground Cable Co. v. Attorney-General*, 46 N. J. Eq. 270.

⁵ *Ashley v. Ryan*, 153 U. S. 436, 49 Ohio St. 504; *Chicago & E. I. R. Co. v. State*, 153 Ind. 134. On a consolidation of an Ohio corporation

with corporations of other states, the fees required by statute to be collected when articles of agreement of consolidation are filed may be proportioned to the capital stock of the new corporation: *Ashley v. Ryan*, *supra*.

⁶ *Holder v. Aultman, etc. Co.*, 169 U. S. 81; *Aultman, etc. Co. v. Holder*, 68 Fed. Rep. 467; *Coit v. Sutton*, 102 Mich. 324. See *Moline Plow Co. v. Wilkinson*, 105 Mich. 57.

A summary of the rules governing state taxation of companies or corporations engaged in foreign or interstate commerce is found in one of the decisions of the supreme court of the United States. "It is settled that where, by way of duties laid on the transportation of the subjects of interstate commerce, or on the receipts derived therefrom, or on the occupation or business of carrying it on, a tax is levied by a state on interstate commerce, such taxation amounts to a regulation of such commerce, and cannot be sustained. But property in a state, belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a state, and may take the form of a tax for the privilege of exercising its franchises within the state, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the state (the exaction, therefore, not being susceptible of exceeding the sum which might be leviable directly thereon), and if the payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes. The corporation is thus made to bear its proper proportion of the burdens of the government under whose protection it conducts its operations, while interstate commerce is not in itself subjected to restraint or impediment."¹

It has been decided that a tax upon the income received from interstate commerce is a tax upon the interstate commerce itself, and is therefore unauthorized.² "The states cannot be permitted, under the guise of a tax upon business transacted within their borders, to impose a burden upon commerce among the states, when the business so taxed is itself interstate commerce."³ This principle applies to a state tax upon the gross receipts of a steamship company incorporated under the laws of the state, which receipts are

¹ *Telegraph Co. v. Adams*, 155 U. S. 688; *Erie R. Co. v. Pennsylvania*, 158 U. S. 431; see to the same effect, *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196; *Leloup v. Port of Mobile*, 127 U. S. 640; *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194.

² *Steamship Co. v. Pennsylvania*, 122 U. S. 326; *Leloup v. Port of Mobile*, 127 U. S. 640.

³ *Fargo v. Stevens*, 121 U. S. 230.

derived from the transportation of persons and property between different states and to and from foreign countries.¹ It also applies to a state law taxing the gross receipts of railroads for the carriage of freight and passengers into, out of, or through the state;² and to a state statute which levies a tax

¹ *Steamship Co. v. Pennsylvania*, 122 U. S. 326. It was held in Kentucky that the fact that a ferry company domiciled in that state and doing business over a river between that and another state was engaged in interstate commerce did not deprive the state of the right to tax its franchise, determining the value thereof by considering its income: *Louisville & J. Ferry Co. v. Commonwealth (Ky.)*, 57 S. W. Rep. 624.

² *Fargo v. Stevens*, 121 U. S. 230; *Northern Pac. R. Co. v. Raymond*, 5 Dak. 356. See *Northern Pac. R. Co. v. Barnes*, 2 N. D. 310; *McHenry v. Alford*, 168 U. S. 651. In the case of the *State Tax on Railway Gross Receipts*, 15 Wall. 284, a tax upon the gross receipts of a railroad derived in part from the carriage of goods from one state to another was sustained on the ground that the states have authority to tax the estate, real and personal, of all corporations of their own creation, including carrying companies, precisely as they may tax similar property belonging to natural persons, and on the further ground that the receipts, when taxed, had become part of the general property of the corporation, and were in its treasury within the state. It was held in the case of the *Delaware R. Tax*, 18 Wall. 206, that when a line of railroad or canal belonging to any company liable to the tax lay partly in the state and partly in an adjoining state or states, only such part of the net earnings or income of the company should be subject to the tax as would be in that proportion to the whole net earnings or income of the company which the length of the

road or canal within the state bore to the whole length of such road or canal. Following *Fargo v. Stevens*, *supra*, a state statute imposing a tax upon the entire gross earnings of all railways operated in the state, and providing that if a railway be situated partly within and partly without the state, the tax should be proportionate to the mileage of trains run within the state, was held unconstitutional as interfering with interstate commerce: *Vermont & C. R. Co. v. Vermont Cent. R. Co.*, 63 Vt. 1. In the case of *Indiana v. Pullman Palace Car Co.*, 11 Biss. 561, 16 Fed. Rep. 193, the imposition of a certain proportionate tax, according to the distance traveled in the state, on the gross receipts of foreign sleeping-car corporations, conveying passengers to, from, and through the state, was held unconstitutional as conflicting with the interstate commerce clause. A state tax upon the receipts derived by railway and other transportation companies from commerce between points within the state, and between points without the state but passing through it, is void as a regulation of interstate commerce, and it is immaterial that goods destined for points without the state were temporarily detained in the state after transportation had actually begun: *Delaware & H. Canal Co. v. Commonwealth (Pa.)*, 17 Atl. Rep. 175. But the transportation of goods and passengers by continuous carriage from one point in the state to another point in the same state is not interstate commerce, although for a part of the route it is over the soil of another state; and therefore

upon the gross receipts of a telegraph company for messages between points within and points without the state.¹ Nor can a state tax a foreign express company on gross receipts not received in the state, or on receipts for transportation of mer-

it is within the power of the state to impose a tax on its gross receipts: *Lehigh Valley R. Co. v. Pennsylvania*, 145 U. S. 192, 205; *Commonwealth v. Lehigh Valley R. Co.*, 129 Pa. St. 388. The Wisconsin statute requiring owners of palaces, etc., cars to return for taxation "a statement of the gross earnings made by the use of such cars between points within the state of Wisconsin," requires a statement only of the earnings derived from the use of such cars in transporting passengers who both get on and off at points within the state, and, so construed, is not a regulation of interstate commerce: *State v. Pullman Palace Car Co.*, 64 Wis. 89. A state statute which requires every corporation, person, or association operating a railroad within the state to pay an annual tax to be determined by the amount of its gross transportation receipts, and further that when applied to a railroad lying partly within and partly without the state, or to one operated as a part of a line or system extending beyond the state, the tax should be equal to the proportion of the gross receipts in the state, to be determined according to a sliding scale proportioned to the average gross earnings per mile within the state for the year preceding the levy of the tax, is merely a way of ascertaining the value of the privilege, and does not render the tax a charge upon the receipts themselves so as to be an interference with interstate commerce: *Maine v. Grand Trunk R. Co.*, 142 U. S. 217. Practically the same method of taxation was upheld in New Jersey when ap-

plied to a company engaged in transporting oil from points in other states to points in that state: *Tide-Water Pipe Co. v. State Board*, 57 N. J. L. 516. A state statute imposing a tax on the gross receipts of transportation companies for tolls and transportation is not, so far as it imposes a tax on tolls paid by a company engaged in interstate transportation to a company for the use of its railway in the state, an interference with interstate commerce: *New York, L. E. & W. R. Co. v. Pennsylvania*, 158 U. S. 431; *Commonwealth v. New York, L. E. & W. R. Co.*, 145 Pa. St. 38. And where a foreign corporation owns a railroad lying partly within and partly without the state, the state may tax such portion of the tolls received for the use of the road as was received for the use of the part within the state: *Ibid.*

¹ *Ratterman v. Western Union Tel. Co.*, 127 U. S. 411; *Western Union Tel. Co. v. Pennsylvania*, 128 U. S. 39; *Western Union Tel. Co. v. Seay*, 132 U. S. 472. Telegraph companies may, however, be so taxed on messages carried wholly within the state: *Western Union Tel. Co. v. Seay*, *supra*. And a single tax assessed under the laws of a state upon the receipts of a telegraph company derived partly from interstate commerce and partly from commerce within the state, but returned and assessed in gross, and without separation or apportionment, is invalid only in proportion to the extent that such receipts were derived from interstate commerce: *Ratterman v. Western Union Tel. Co.*, *supra*.

chandise taken up and delivered out of but carried through the state.¹

The imposition of a license or privilege tax upon the conduct of interstate commerce is obviously a regulation of such commerce as well as a burden thereupon, and a state statute laying such a tax is necessarily invalid.² Thus a foreign corporation whose vessels, while *en route* between the ports of two different states, stop at the port of a third state, is not liable for a license tax at such port when all its operations there are an essential part of its interstate commerce business.³ A tax upon the masters of vessels engaged in foreign commerce, of a certain sum on account of every passenger brought from a foreign country into the state, is a tax upon commerce.⁴ A city ordinance requiring vessels to pay for the privilege of towing boats, etc., into or out of the city's harbor, or from one place to another within such harbor, is void as an interference with interstate commerce;⁵ and so is a city ordinance imposing a tax on the privilege of navigating the Mississippi river between New Orleans and the Gulf of Mexico.⁶ On the other hand, the requirement of a license tax from any person residing in a house-boat is not, though applicable to navigable rivers between different states, an interference with interstate commerce.⁷ Nor does a statute requiring a license from all boats

¹ *Indiana v. American Express Co.*, *Lyng v. Michigan*, 135 U. S. 161; 7 Biss. 227. A state statute imposing on companies which carry goods by express, on contract with any railroad or steamboat company, "a tax on their "receipts for business done within this state," is not an interference with interstate commerce: *Pacific Express Co. v. Seibert*, 142 U. S. 339, 44 Fed. Rep. 310. See *American Express Co. v. St. Joseph*, 66 Mo. 675. A state law providing for the taxation of the property of express companies is not unconstitutional because it permits the assessing board to take into consideration their gross earnings from contracts made with railroad companies extending to points without the state: *State v. State Board*, 3 S. D. 338.

² *Leloup v. Mobile*, 127 U. S. 640; *Clyde S. S. Co. v. Charleston*, 76 Fed. Rep. 46.

³ *Passenger Cases*, 7 How. 283. It would make no difference that the master was permitted to give an indemnity bond in lieu of payment: *Henderson v. Mayor*, 92 U. S. 259. A privilege tax required of steamboat and railroad agents was held in *Lightburne v. Taxing Dist.*, 4 Lea 220, not to be a tax upon commerce.

⁴ *St. Louis v. Consolidated Coal Co.* (Mo.), 59 S. W. Rep. 103.

⁵ *Moran v. New Orleans*, 112 U. S. 69.

⁶ *Robertson v. Commonwealth*, 101 Ky. 285.

⁷ *Leloup v. Mobile*, 127 U. S. 640;

engaged in planting or taking oysters in certain navigable waters constitute such an interference.¹ It has been held that a parish may require a license tax of the owner of a vessel for trading and peddling in its waters.² A state statute imposing a license tax on residents of the state for the privilege of fishing in waters of the state does not encroach on the federal authority to regulate commerce and navigation.³

The assessment in one state of the franchises of a railroad company extending through several states is repugnant to the power of congress to regulate interstate commerce;⁴ and a city situated on a branch line and not a main line of a foreign railway corporation involving interstate commerce cannot impose on the company a license tax for the privilege of engaging in the business of a common carrier within its limits.⁵ It has also been held that a tax against a railroad company, which is a link in a through line of road, and carries freight and passengers in and out of the state, assessed by the state through which the main line passes, as a condition precedent to the company's keeping an office in such state for the use of its officers, agents, and employees, is a tax on the means by which the company is enabled to carry on its business of interstate commerce, and is therefore invalid.⁶ But a privilege tax on railroad companies according to their mileage in the state has been sustained,⁷ and so has a municipal ordinance, under legislative authority, imposing a tax of a specified amount on every railroad company operating within the corporate limits.⁸ The imposition of a municipal license tax on every railroad agency is, however, a regulation of commerce, so far as it applies to an agent who solicits passenger traffic in the city over a railroad operated between two points in other states; for the lim-

¹Johnson v. Loper, 46 N. J. L. 321.

²Steamer Block v. Richland, 26 La. An. 642.

³Morgan v. Commonwealth, 98 Va. 812.

⁴California v. Central Pac. R. Co., 127 U. S. 1. See People v. Wemple, 138 N. Y. 1.

⁵San Bernardino v. Southern Pac. R. Co., 107 Cal. 524. This case holds that the question of power in a city to enforce such a license is not to be

tested by the question whether the city is located upon a trunk or a branch line, but rather by the character of the business in which the railroad company is engaged in the city passing the ordinance.

⁶Norfolk & W. R. Co. v. Pennsylvania, 136 U. S. 114.

⁷Knoxville & O. R. Co. v. Harris, 99 Tenn. 684.

⁸Piedmont R. Co. v. Reidsville, 101 N. C. 404.

itation on the power of a state to tax interstate commerce extends to all such commerce, though it may not actually pass through its territory, and the agent's business, being carried on to assist the traffic of his road, is within the protection of the commerce clause though it may not be essential to such traffic.¹ The requirement by a state that persons owning or operating elevators situated on railroad rights of way shall procure licenses does not infringe the interstate commerce clause.²

It is also incompetent for a state to impose a privilege tax upon sleeping or parlor-car companies engaged in interstate travel,³ or upon foreign express companies transporting goods between points in other states,⁴ or upon the agents of such express companies,⁵ or upon the business of telegraph companies occupied in transmitting messages between different states.⁶ But a state privilege tax on each mile of wire within the state, imposed on all telegraph companies therein in lieu of all other taxes, is a tax on property and not an interference with interstate commerce.⁷ A telephone company will not be enjoined

¹ *McCall v. California*, 136 U. S. 104.

² *Cargill Co. v. Minnesota*, 180 U. S. 452; *State v. Cargill Co.*, 77 Minn. 223.

³ *Picard v. Pullman Southern Car Co.*, 117 U. S. 34; *Pullman Southern Car Co. v. Nolan*, 22 Fed. Rep. 276.

⁴ *Webster v. Bell*, 68 Fed. Rep. 183. In the case of *Osborne v. Mobile*, 16 Wall. 479, 44 Ala. 493, a city ordinance requiring that every express company or railroad company doing business in that city and having a business beyond the limits of the state should pay an annual license fee, was held not a regulation of interstate commerce; but it was said of that case in *Leloup v. Port of Mobile*, 127 U. S. 640, that "such an ordinance would not be regarded as repugnant to the power conferred upon congress to regulate commerce among the several states."

⁵ *Crutcher v. Kentucky*, 141 U. S. 47.

⁶ *Leloup v. Port of Mobile*, 127 U. S. 640. This case holds that telegraphic communications are commerce, and,

if carried on between different states, interstate commerce, and so free from state regulation except of strictly police character. A tax of a specific sum levied as an occupation tax on telegraph companies for each message sent, is void as a tax on interstate and foreign intercourse: *Telegraph Co. v. Texas*, 105 U. S. 460. And being invalid as to interstate messages, the whole statute must fall: *Western Union Tel. Co. v. State*, 62 Tex. 630. A city ordinance imposing on a telegraph company engaged in interstate commerce a license tax which is in excess of an *ad valorem* tax that could be assessed on its property situated in the city is void, being a regulation of interstate commerce: *Postal Tel. Cable Co. v. Richmond (Va.)*, 37 S. E. Rep. 789.

⁷ *Postal Tel. Cable Co. v. Adams*, 155 U. S. 688, 71 Miss. 555. A city has not power to impose pole and wire taxes upon a telegraph company doing interstate business, in excess

from transmitting messages from one state to another because of its refusal to pay taxes on business so transacted across state lines, as such business constitutes interstate commerce.¹

Although a company or corporation is engaged in interstate commerce, it may nevertheless be taxed upon all local business, but in the imposition of such a tax the interstate business must be discriminated from the *infra*-state business, or it must be capable of such discrimination, so that it may clearly appear that the *infra*-state business alone is taxed.² Thus a city ordinance imposing an occupation tax on railroads having depots in the city, and excepting from the levy all interstate traffic of such corporations, is not invalid as imposing a burden on interstate commerce.³ So, where sleeping-cars are run wholly within a state, the business may be taxed as a privilege.⁴ A license tax imposed by a city upon telegraph companies for business done exclusively within the city, and not including any business done to or from points without the state, or for the United States, is not invalid as applied to a company partly engaged in transmitting interstate messages, and which has accepted the provisions of the federal statutes so as to become an agency of the United States.⁵ It is also held that a city ordinance requiring a certain license fee per instrument to be paid by every person or corporation operating and maintaining a telephone in the city does not interfere with interstate commerce where it applies only to instruments rented for business of a local nature confined strictly within the city limits.⁶ And a statute which, as construed by the highest

of the reasonable expense to the city of the inspection and regulation thereof: *Philadelphia v. Western Union Tel. Co.*, 82 Fed. Rep. 797. See *Philadelphia v. American Union Tel. Co.*, 167 Pa. St. 406. In *Philadelphia v. Postal Tel. Cable Co.*, 67 Hun 21, it was held that license fees imposed by a city on telegraph poles and wires do not constitute a regulation of interstate commerce.

¹ In *re Pennsylvania Tel. Co.*, 48 N. J. Eq. 91. See *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530.

² *Webster v. Bell*, 68 Fed. Rep. 183.

³ *York v. Chicago, B. & Q. R. Co.*,

56 Neb. 572. See *Anniston v. Southern R. Co.*, 112 Ala. 557; *Alabama G. S. R. Co. v. Bessemer*, 113 Ala. 668.

⁴ *Gibson County v. Pullman Southern Car Co.*, 42 Fed. Rep. 572.

⁵ *Postal Tel. Cable Co. v. Charleston*, 153 U. S. 692; *Western Union Tel. Co. v. Charleston*, 56 Fed. Rep. 419. See *Southern Exp. Co. v. Mobile*, 49 Ala. 404; *Montgomery v. Shoemaker*, 51 Ala. 114; *Moore v. Eufaula*, 97 Ala. 670; *Western Union Tel. Co. v. Fremont*, 39 Neb. 692, 43 Neb. 499.

⁶ *Ogden City v. Crassman*, 17 Utah 66.

court of the state, imposes a license tax on express companies doing any local business, but none on those doing interstate or foreign business only, is not void as being a regulation of interstate commerce.¹

“Although the transportation of the subjects of interstate commerce, or the receipts derived therefrom, or the occupation or business of carrying it on, cannot be directly subjected to state taxation, yet property belonging to corporations or companies may be; and, whatever the particular form of the exaction, if it is essentially only property taxation, it will not be considered as falling within the inhibition of the constitution. Corporations and companies engaged in interstate commerce should bear their proper proportion of the burdens of the government under whose protection they conduct their operations; and taxation on property, collectible by the ordinary means, does not affect interstate commerce otherwise than incidentally, as all business is affected by the necessity of contributing to the support of the government.”² Of course it is necessary, in order to subject to state taxation the property of corporations engaged in foreign or interstate commerce, that such property be within the jurisdiction of the state.³ Thus a state may tax telegraph property within its borders, though such property is employed in interstate or foreign commerce;⁴

¹ *Osborne v. State*, 33 Ala. 162, 164 U. S. 650.

² Per *Fuller*, C. J., in *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194, 2—; See *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 206; *Leloup v. Port of Mobile*, 127 U. S. 640, 6—; *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18; *Covington & C. Bridge Co. v. Kentucky*, 154 U. S. 204; *Telegraph Co. v. Adams*, 155 U. S. 688; *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513.

³ *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196. This case holds that a New Jersey corporation engaged wholly in the transportation of persons and property between states, while subject in Pennsylvania to ordinary taxation on the value of

its property used in that state, cannot be taxed there on the appraised value of its capital stock. A vessel cannot be taxed as property in a port where it lies for the temporary purpose of loading: *People v. Niles*, 35 Cal. 282. And see *Indiana v. Pullman Palace Car Co.*, 16 Fed. Rep. 193.

⁴ *Western Union Tel. Co. v. Attorney-General*, 125 U. S. 530, 141 U. S. 40; *Western Union Tel. Co. v. Taggart*, 163 U. S. 1; *People v. Terney*, 57 Hun 357. City ordinances imposing an annual charge on the poles and wires of a telegraph company within a city are not regulations of interstate commerce: *Philadelphia v. American Union Tel. Co.*, 167 Pa. St. 406. In *People v. Gold & Stock Tel. Co.*, 98 N. Y. 67, a tax on a telegraph company whose line was partly

and locomotives and cars belonging to a non-domestic transportation company habitually used, or used interchangeably with others of like ownership, in such commerce in a state, may there be taxed as property, even though in the transaction of business they pass into adjoining states and territories.¹ The tax may be fixed by taking the average number of a company's cars, etc., used in such state,² or by assessing them or the company's capital stock in the ratio which the number of miles operated in the state bears to the total number of miles of the whole line.³

As to railroad, telegraph, express, and sleeping-car companies engaged in interstate commerce, their property, in the several states through which their lines or business extend, may be valued as a unit for the purposes of taxation, taking into consideration the uses to which it is put, and all the elements making up aggregate value; and a proportion of the whole, fairly and properly ascertained,—as by taking that part of the value of the entire road which is measured by the ratio of its length in the state to its total length, or by taking as the basis of assessment such proportion of the value of the company's

within and partly without the state, measured by its capital stock, was sustained.

¹ *Marye v. Baltimore & O. R. Co.*, 127 U. S. 117; *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18; *American Refrig. Co. v. Hall*, 174 U. S. 70; *Union Refrig. Co. v. Lynch*, 177 U. S. 149; *Pullman's Palace Car Co. v. Twombly*, 29 Fed. Rep. 658; *Pullman's Palace Car Co. v. Board of Assessors*, 55 Fed. Rep. 206; *Board of Assessors v. Pullman's Palace Car Co.*, 60 Fed. Rep. 37; *Reinhart v. McDonald*, 76 Fed. Rep. 403; *Denver & G. R. Co. v. Church*, 17 Colo. 1; *Hall v. American Refrig. Transit Co.*, 24 Colo. 291; *Pullman's Palace Car Co. v. Commonwealth*, 107 Pa. St. 156; *Union Refrig. Transit Co. v. Lynch*, 18 Utah 378. For cases which held the contrary, see *Appeal Tax Court v. Pullman Palace Car Co.*, 50 Md. 452; *State v. Stephens*, 146 Mo. 662;

Bain v. Richmond, 105 N. C. 363; *Central R. Co. v. State Board*, 49 N. J. L. 1.

² *American Refrig. Co. v. Hall*, 174 U. S. 70.

³ *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18; *Pullman's Palace Car Co. v. Twombly*, 29 Fed. Rep. 658; *Pullman's Palace Car Co. v. Board of Assessors*, 55 Fed. Rep. 206; *Board of Assessors v. Pullman's Palace Car Co.*, 60 Fed. Rep. 37; *Pullman's Palace Car Co. v. Commonwealth*, 107 Pa. St. 156. Where the equipment of a domestic railroad corporation is used interchangeably upon its lines within and without the state, its capital stock can only be taxed in the proportion that the number of miles operated and equipped in one state bears to the entire mileage: *Commonwealth v. Delaware, L. & W. R. Co.*, 145 Pa. St. 96. See *Delaware R. Tax*, 18 Wall. 206.

entire capital stock as the length of its lines in the state bears to the whole length of its lines — may be taxed by the state without violating any federal restriction.¹ And a state statute providing that when only part of a railroad lies in the state it shall pay taxes on such proportion of the valuation of its capital stock and funded and floating debt as the length of its road lying in the state bears to the entire length of the road, is not unconstitutional as laying a tax on interstate commerce.²

A state statute providing for the taxation of a telegraph company upon its property within the state determined as above is invalid in so far as it provides for the issue of an injunction to restrain the company from transacting business until delinquent taxes are paid.³

While it is not within the power of one of two states connected by a bridge over a navigable river to fix, without the consent of congress or the concurrence of the other state, tolls for passage over the bridge, thus attempting to regulate interstate commerce of which the bridge is an instrument,⁴ yet the fact that the bridge is such an instrument does not exempt from state taxation so much of it as is within the limits of the state.⁵ And a proportional state tax on the intangible property, within

¹ *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530; *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18; *Attorney-General v. Western Union Tel. Co.*, 141 U. S. 40; *Maine v. Grand Trunk R. Co.*, 142 U. S. 17; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Cleveland, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 439; *Western Union Tel. Co. v. Taggart*, 163 U. S. 1; *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194, 166 U. S. 185; *Adams Express Co. v. Kentucky*, 166 U. S. 171; *Pullman's Palace Car Co. v. Twombly*, 29 Fed. Rep. 658; *Attorney-General v. Western Union Tel. Co.*, 33 Fed. Rep. 129; *Pullman's Palace Car Co. v. Board of Assessors*, 55 Fed. Rep. 206; *Board of Assessors v. Pullman's Palace Car Co.*, 60 Fed. Rep. 37; *Reinhart v. McDonald*, 76 Fed. Rep. 203;

Wells, Fargo & Co.'s Express v. Crawford County, 63 Ark. 576; *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 625; *Evansville & I. R. Co. v. West*, 138 Ind. 697; *Western Union Tel. Co. v. Taggart*, 141 Ind. 281; *State v. Adams Express Co.*, 144 Ind. 549; *State v. Jones*, 51 Ohio St. 542; *Commonwealth v. Pullman's Palace Car Co.*, 107 Pa. St. 156.

² *State v. New York, N. H. & H. R. Co.*, 60 Conn. 326.

³ *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530. See *In re Pennsylvania Tel. Co.*, 48 N. J. Eq. 91.

⁴ *Covington & C. Bridge Co. v. Kentucky*, 154 U. S. 204.

⁵ *Henderson Bridge Co. v. Henderson*, 141 U. S. 679; *Pittsburgh, C., C. & St. L. R. Co. v. Board of Public Works*, 172 U. S. 232.

the state, of a bridge company owning such a bridge, is not a tax on interstate commerce when the business of transportation is not carried on by the bridge company but by persons and corporations who pay tolls to it;¹ the fact that the tax may tend to increase the tolls being too remote and incidental to make it a tax on the business transacted.² So, too, interstate commerce is not taxed by taxing the capital stock of a bridge company which holds an interstate bridge, but does not transact any interstate business over it.³ Nor does the fact that such a bridge is used by the corporation controlling it for purposes of interstate commerce exempt it from taxation by the state within whose limits it is permanently located, although the state cannot by its laws impose direct burdens upon the conduct of interstate commerce carried on over the bridge.⁴

A tax on freight, taken up within a state and carried out of it, or taken up out of a state and brought within it, is a tax upon commerce between the states, and therefore inadmissible; and it is immaterial that no distinction is made between freight carried wholly within the state and that brought into or carried through or out of it.⁵ And property delivered to a carrier for transportation, and in its hands for a reasonable time awaiting shipment to points out of the state, is within the protection of this rule and not taxable.⁶ And if the property is purchased by one who is resident abroad, and is distinctly set apart for export, it is not taxable, though not yet on shipboard.⁷ Still more plainly would the property be non-taxable if it were merely in transit through the state.⁸ Property bought within a state to be shipped out of it, but not yet started on its destination, and

¹ *Henderson Bridge Co. v. Kentucky*, 166 U. S. 150; *Henderson Bridge Co. v. Commonwealth*, 99 Ky. 623.

² *Henderson Bridge Co. v. Kentucky*, 166 U. S. 150.

³ *Keokuk, etc. Bridge Co. v. Illinois*, 176 Ill. 267, 175 U. S. 626.

⁴ *Henderson Bridge Co. v. Henderson*, 173 U. S. 592; *Henderson Bridge Co. v. Henderson (Ky.)*, 36 S. W. Rep. 561. See *Louisville Bridge Co. v. Louisville*, 81 Ky. 189.

⁵ *State Freight-Tax Cases*, 15 Wall.

232. See *Erie R. Co. v. State*, 31 N. J. L. 531.

⁶ *Ogilvie v. Crawford County*, 7 Fed. Rep. 745; *State v. Carrigan*, 39 N. J. L. 35. A tax on all coal received by carriers and to be carried to points either within or without the state was held to be a tax on commerce: *State v. Railroad Co.*, 40 Md. 22.

⁷ *Blount v. Munroe County*, 60 Ga. 61; *Clarke v. Clarke*, 3 Woods 405.

⁸ *Standard Oil Co. v. Bachelor*, 89 Ind. 1; *State v. Carrigan*, 29 N. J. L.

awaiting a finishing process, is taxable with other property within the state;¹ and so is grain bought on commission for shipment;² and so are cattle owned out of the state but kept in it several months for pasturage.³

A tax on travel may be as clearly void as any other tax on interstate or foreign intercourse. The state cannot tax the privilege of passing out of or coming into the state, either directly by levying the tax on the person going or coming, or indirectly by requiring carriers to pay a tax in respect to each person carried or brought by them.⁴

A state statute requiring corporate officers to deduct a state tax in paying interest on bonds of the corporation owned by residents of the state is not a regulation of interstate or foreign commerce.⁵ The requirement by a state that a revenue stamp shall be affixed to a bill of exchange or a bill of lading drawn in one state and payable in another is a tax on com-

35; *State Freight-Tax Cases*, 15 Wall. 232. That cattle received by dealers were purchased for export does not constitute them property in transit: *Meyers v. County Com'rs*, 83 Md. 385.

¹ *Powell v. Madison*, 21 Ind. 335; *Rieman v. Shepard*, 27 Ind. 288; *Standard Oil Co. v. Combs*, 96 Ind. 179; *Carrier v. Gordon*, 21 Ohio St. 605. In this last case it is held that property not yet removed from the place of its purchase cannot be considered as in transit because of any intent to ship it: See *Cole v. Randolph*, 31 La. An. 535.

² *Walton v. Westwood*, 73 Ill. 125. Coal brought into a state for sale is taxable there: *Brown v. Houston*, 33 La. An. 843; *Pittsburgh & S. Coal Co. v. Bates*, 156 U. S. 557, 40 La. An. 226.

³ *Hardesty v. Fleming*, 57 Tex. 395; *Kelley v. Rhoads*, 7 Wyo. 237.

⁴ *Passenger Cases*, 7 How. 283, holding that a tax upon the masters of vessels engaged in foreign commerce, of a certain sum on account of every passenger brought from a foreign country into the state is a

tax upon commerce. It would make no difference that the master was permitted to give an indemnity bond instead of payment: *Henderson v. Mayor*, 92 U. S. 259. A tax on alien passengers is none the less a tax on commerce because levied in aid of state inspection laws; those laws apply to property, not to persons: *People v. Compagnie, etc.*, 107 U. S. 59. And see *Chy Lung v. Freeman*, 92 U. S. 275. A state tax of a certain sum on every person leaving the state by public conveyance was held invalid in *Crandall v. Nevada*, 6 Wall. 35; and in *State Treasurer v. Philadelphia, etc. R. Co.*, 4 Houst. 158, a law imposing a tax on railroad companies of ten cents on every passenger carried within the state, excepting soldiers and sailors of the United States, was held to be in effect a regulation of interstate commerce, and, therefore, invalid. See *New York v. Miln*, 11 Pet. 103.

⁵ *Commonwealth v. New York, L. E. & W. R. Co.*, 150 Pa. St. 234; *Commonwealth v. Delaware & Hudson Canal Co.*, 150 Pa. St. 245.

merce.¹ But a tax on exchange and money brokers;² a city license tax upon persons engaged in a commercial street brokerage in the city;³ a tax on legacies to aliens;⁴ a tax on the business of selling farm produce on commission;⁵ and a tax upon persons engaged in packing or canning oysters, which tax is applicable to oysters caught in and shipped from another state,⁶ — have all been sustained against the objection that in effect they were a tax upon commerce and an interference with the constitutional powers of congress.

The fact that taxation tends to increase the expenses attendant upon the use or possession of the thing taxed does not of itself constitute an objection to such taxation as a burden upon interstate commerce.⁷ "Every tax upon personal property, or upon occupations, business or franchises, affects more or less the subjects and the operations of commerce; yet it is not everything that affects commerce that amounts to a regulation of it, within the meaning of the constitution."⁸ The interference with the commercial power must be direct, and not the mere incidental effect of the requirement of the usual proportional contributions to public maintenance.⁹

The constitutional power of congress to regulate commerce with the Indian tribes is not interfered with when a state or territory subjects to local taxation the property of others than Indians upon an Indian reservation; and where cattle are by outsiders placed for grazing purposes upon such a reservation, taxation of them by a territory is not a violation of the rights of the Indians or an invasion of the jurisdiction and control of the United States over them and their lands.¹⁰ It has been decided that the property of railway companies traversing Indian reservations is subject to taxation by the states and territories in which such reservations are located.¹¹ A state tax upon a licensed trader within an Indian reservation has been held

¹ *Almy v. California*, 24 How. 169.
See *Woodruff v. Parham*, 8 Wall. 123,
137.

² *Nathan v. Louisiana*, 8 How. 73.

³ *Walton v. Augusta*, 104 Ga. 757.

⁴ *Mager v. Grima*, 8 How. 490.

⁵ *State v. Wagener*, 77 Minn. 483.

⁶ *Applegarth v. State*, 89 Md. 140.

⁷ *Delaware R. Tax*, 18 Wall. 206.

⁸ *State Tax on R'y Gross Receipts*,
15 Wall. 292.

⁹ *Erie R. Co. v. Pennsylvania*, 158
U. S. 431; *Henderson Bridge Co. v.*
Kentucky, 166 U. S. 150.

¹⁰ *Thomas v. Gay*, 169 U. S. 264;
Wagoner v. Evans, 170 U. S. 588; *Gay*
v. Thomas, 5 Okl. 1.

¹¹ *Utah & N. R. Co. v. Fisher*, 116

void,¹ while on the other hand the stock in trade of such a trader, and cattle and horses belonging to him but kept on the reservation with the consent of the Indians, have been declared not to be exempt from state and county taxation.²

Taxes in abridgment of the privileges and immunities of citizens. The federal constitution provides that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states,³ and that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.⁴ The obvious purpose of the first of these provisions is to preclude the several states from discriminating in their legislation against the citizens of other states.⁵ Therefore, a state law which imposes upon citizens of other states higher taxes or duties than are imposed upon citizens of the state laying them, is void,⁶ as is also one which denies to non-residents of the state rights allowed to residents under the same circumstances, in respect to deductions from taxable personalty by reason of debts owed by the taxpayer;⁷ and the principle applies to privilege taxes and taxes upon business, and precludes a state from levying upon traders from other states a license tax greater than is required of its own citizens.⁸ Nor can a state, while exempting

U. S. 28; *Maricopa & P. R. Co. v. Arizona*, 156 U. S. 347. See *Trescott v. Hurlbut Land, etc. Co.*, 73 Fed. Rep. 60; *Delinquent List v. Territory (Ariz.)*, 26 Pac. Rep. 310.

¹ *Foster v. Com'rs*, 7 Minn. 84.

² *Cosier v. McMillan*, 22 Mont. 484; *Moore v. Beason*, 7 Wyo. 292.

³ U. S. Const., art. IV, § 2, par. 1.

⁴ U. S. Const., Amend. XIV.

⁵ *Paul v. Virginia*, 8 Wall. 168; *Ward v. Maryland*, 12 Wall. 418; *Williams v. Bruffy*, 96 U. S. 176, 183; *Corfield v. Coryell*, 4 Wash. C. C. 371; *Ex parte Archy*, 9 Cal. 147; *Jackson v. Bullock*, 12 Conn. 38; *Bliss's Petition*, 63 N. H. 135; *Lemon v. People*, 20 N. Y. 562.

⁶ *Corfield v. Coryell*, 4 Wash. C. C. 371; *Wiley v. Palmer*, 14 Ala. 627; *Scott v. Watkins*, 22 Ark. 556, 564;

Oliver v. Washington Mills, 11 Allen 268; *Farmington v. Downing*, 67 N. H. 441. See *Farris v. Henderson*, 1 Okl. 384.

⁷ *Sprague v. Fletcher*, 69 Vt. 69.

⁸ *Ward v. Maryland*, 12 Wall. 418; *Cullman v. Arndt*, 125 Ala. 581; *Gould v. Atlanta*, 55 Ga. 678; *Indianapolis v. Bieler*, 138 Ind. 30; *Marshalltown v. Blum*, 58 Iowa 184; *McGuire v. Parker*, 32 La. An. 832; *Rodgers v. Kent Circuit Judge*, 115 Mich. 441; *Crow v. State*, 14 Mo. 237; *State v. North*, 27 Mo. 464; *State v. Lancaster*, 63 N. H. 267; *Commonwealth v. Snyder*, 182 Pa. St. 630. A state cannot refuse a peddler's license to a citizen of another state asked for upon the same terms that it grants licenses to its own citizens: *Bliss's Petition*, 63 N. H. 135. A tax was held void which

its own citizens from a tax on their inheritances, impose such a tax on inheritances falling to citizens of other states.¹ A state law is void which provides that no person shall be licensed to engage in a particular employment unless he has been a resident of the state for a year;² but mere matters of detail in revenue legislation which make distinctions in forms and procedure in the taxation of residents and non-residents, but which have in view the securing of uniformity in the burden, and are adopted because supposed to be necessary to that end, are not objectionable, where a difference in circumstances seems to justify different regulations.³

discriminated in favor of goods bought from a resident who had paid his occupation tax against those bought from a non-resident who was liable to no such tax: *Albertson v. Wallace*, 81 N. C. 479. A provision of a town charter authorizing a tax upon auction sales, except such as are made by citizens of the town or county who are *bona fide* owners of the property, discriminates against citizens of other states, and is invalid: *Daniel v. Trustees of Richmond*, 78 Ky. 542.

¹In *re Stanford's Estate* (Cal.), 54 Pac. Rep. 259.

²In *re Watson*, 15 Fed. Rep. 511. The ground of decision in this case was, however, referred to the commerce power. So it was also in *Welton v. Missouri*, 91 U. S. 275, where the discrimination was against goods the produce or manufacture of other states. Possibly in each case the invalidity of the law might have been referred to the clause now under consideration. See *Machine Co. v. Gage*, 100 U. S. 676. The right to follow the ordinary employments is one of the privileges of citizens, though the state may regulate them under its police power: *Slaughter House Cases*, 16 Wall. 36. And may require the taking out of a license by those pursuing them, provided there is no discrimination in doing so against

citizens of other states: *State v. Norris*, 78 N. C. 443; *Corson v. State*, 57 Md. 251. And a state may impose a license tax on one who is engaged in hiring laborers to be employed in another state—no distinction being made in the tax against non-residents: *Shepperd v. Sumter Co.*, 59 Ga. 535; *Williams v. Fears*, 110 Ga. 584, 179 U. S. 270.

³See *Redd v. St. Francis County*, 17 Ark. 416. A statute levying taxes on personalty only, *e. g.*, cattle grazing on Indian reservations under leases granted by the Indians, cannot be regarded as an unjust discrimination against non-residents, because exempting real property. Treating personal property as one class and real estate as another is not an illegal discrimination: *Thomas v. Gay*, 169 U. S. 264. A state statute requiring the treasurer of each private corporation doing business in the state to deduct the state tax from the interest paid on any bond, etc., does not contravene the federal constitution as providing for an unjust discrimination in favor of persons owning bonds of foreign corporations: *Jennings v. Coal Ridge Imp. etc. Co.*, 147 U. S. 147, following *Railroad Co. v. Pennsylvania*, 134 U. S. 232. A state statute providing for the taxation of shares of capital stock in insurance companies was

It has been decided that the privileges or immunities of citizens of other states are not abridged by a statute declaring that no commercial fertilizers shall be sold or offered for sale until the manufacturer or importer obtains a license from the state for each brand;¹ or by a state law which provides that every "merchant . . . or other dealer" who shall buy and sell goods not specially taxed elsewhere shall, in addition to his *ad valorem* tax on his stock, pay a license tax "on the total amount of his purchases in or out of the state," except purchases of farm products from the producer;² or where, by a general tax act, a specific tax is assessed upon every sewing-machine company selling or dealing in sewing-machines by itself or its agents in the state, even though there are, in point of fact, no domestic companies engaged in such business within the state.³ Nor are those privileges and immunities impaired by a statute imposing a license tax upon a person who sells or offers for sale by retail manufacturing implements or machines whereof he is not the owner.⁴ But when, in addition to being in violation of the constitution of the state, a taxing statute, or a tax laid under a statute, results in an arbitrary and oppressive discrimination against a large class of citizens or a large species of property, it is an abridgment of the privileges and immunities of citizens of the United States.⁵ It has also been held that the equal-privilege clause of the federal constitution does not secure to a merchant who pays taxes in his

held not to contravene the clauses of the federal constitution in regard to the privileges and immunities of citizens because of its provisions for the taxation of non-residents' shares of capital stock in insurance companies. Nor are those clauses infringed by a state statute providing that all live stock brought into the state for the purpose of grazing should be taxed for the fiscal year during which it was brought into the state, and which vested the county assessors with powers to collect the same as soon as the property was brought into their counties: *Kelley v. Rhoads*, 7 Wyo. 237; *State v. Travelers' Ins. Co. (Conn.)*, 47 Atl.

Rep. 299. And a state law imposing an inheritance tax is not objectionable because it discriminates among collateral kindred; the right to receive property by inheritance not being guaranteed by the constitution: *Hagerty v. State*, 55 Ohio St. 613.

¹ *American Fertilizing Co. v. Board of Agric.*, 43 Fed. Rep. 609.

² *State v. French*, 109 N. C. 722.

³ *Singer Manuf. Co. v. Wright*, 33 Fed. Rep. 121.

⁴ *American Harrow Co. v. Shaffer*, 68 Fed. Rep. 750, 166 U. S. 718.

⁵ *Nashville, C. & St. L. R. Co. v. Taylor*, 86 Fed. Rep. 168.

home state the right to sell his goods in all other states free from taxation.¹

According to the highest court of Maryland the provision of the Fourteenth Amendment which prohibits the abridgment by a state of the privileges or immunities of citizens of the United States does not control the power of a state over its own citizens.² But the supreme court of Vermont holds that the provision in question applies to a discrimination by a state against its own citizens as well as to one in their favor, and that it avoids a statute requiring a license fee from peddlers of goods which are "the manufacture of this state."³

Corporations, whether domestic or foreign, are not citizens within the meaning of the clauses of the constitution now under consideration.⁴ It is therefore no violation of the privileges and immunities of citizens of other states to require a corporation, of which such citizens are stockholders, to submit to such taxation as the state shall see fit to impose as a condition of doing business therein.⁵

Violations of treaty. Congress, in its legislation, may disregard a treaty if it shall see fit to do so,⁶ but a state law imposing taxation which would be repugnant to treaty stipulations would be void; the treaty being "supreme law," anything in the constitution or laws of the state to the contrary notwithstanding.⁷

¹ Ex parte Thornton, 12 Fed. Rep. 538.

² Short v. State, 80 Md. 392.

³ State v. Hoyt, 71 Vt. 59.

⁴ Paul v. Virginia, 8 Wall. 168; Pembina Consol. etc. Co. v. Pennsylvania, 125 U. S. 181; Norfolk & W. R. Co. v. Pennsylvania, 136 U. S. 114; Warren Manuf. Co. v. Aetna Ins. Co., 2 Paine 501; Commonwealth v. Milton, 12 B. Monr. 212; Western Union Tel. Co. v. Mayer, 28 Ohio St. 521, 539. See McCready v. Virginia, 94 U. S. 391, on the general subject; also Bradwell v. State, 16 Wall. 130; Barteneyer v. Iowa, 18 Wall. 129; United States v. Cruikshanks, 92 U. S. 542.

⁵ Paul v. Virginia, 8 Wall. 168; Liv-

erpool Ins. Co. v. Massachusetts, 10 Wall. 566; Ducat v. Chicago, 10 Wall. 410; Pembina Consol. Co. v. Pennsylvania, 125 U. S. 181; Horn Silver Mining Co. v. New York, 143 U. S. 305; Commonwealth v. New York, L. E. & W. R. Co., 145 Pa. St. 38.

⁶ The Cherokee Tobacco, 11 Wall. 616. See s. c., 1 Dill. 264; Thomas v. Gay, 169 U. S. 264; Ropes v. Clinch, 8 Blatch. 304. The case first mentioned was one where an act of congress extended the revenue laws over the Indian territories as respected tobacco, regardless of provisions in prior treaties that exempted tobacco raised by Indians on their reservations.

⁷ U. S. Const., art. 6. Treaties with

Limitation of the rate of taxation. A limitation by constitution of the rate of taxation is self-executing,¹ and so is any provision which takes from a state or its municipalities the power to tax or to contract debts for a specified purpose.² Statutes authorizing the levy of taxes in excess of a constitutional limitation upon their rate or amount are void,³ and the

certain countries held to prevent the application of state laws imposing taxes on inheritances and successions: *Succession of Rixner*, 48 La. An. 558; *Succession of Rabasse*, 50 La. An. 746; *Matter of Strobel*, 5 App. Div. (N. Y.) 621. See *Frederickston v. State*, 23 How. 445.

¹ *St. Joseph Board v. Patten*, 62 Mo. 444; *Austin v. Nalle*, 85 Tex. 510.

² See *Middleport v. Insurance Co.*, 82 Ill. 562; *Hanson v. Vernon*, 27 Iowa 28; *Supervisors v. Railroad Co.*, 121 Mass. 460; *Phillips v. Albany*, 28 Wis. 340. This principle is recognized in all the railroad-aid cases and in all others where similar questions have arisen.

³ *State v. Stephens*, 146 Mo. 662, and cases cited; *Chicago, B. & Q. R. Co. v. Nemaha County*, 50 Neb. 393, and cases cited. For all ordinary purposes of the state the levy cannot exceed the limitations fixed by the constitution: *People v. Scott*, 9 Colo. 422; *In re Appropriations*, 13 Colo. 316; *People v. State Board*, 20 Colo. 220; *Goodykoontz v. People*, 20 Colo. 374; *Parks v. Com'rs*, 22 Colo. 86. Where a section of the constitution, prohibiting an appropriation which would necessitate a state tax beyond the prescribed limit, excepts from its operations expenditures and appropriations made to suppress insurrection, to defend the state, or assist in defending the United States, the legislature may appropriate to pay bonds issued for such purpose any sum required, and may levy any rate of tax necessary to pay the same; but it cannot levy in excess of the

prescribed rate to pay bonds issued to provide for the building of a state capitol or for casual deficiencies: *In re State Board of Equalization*, 24 Colo. 446. The two-mill limitation imposed by the constitution of South Dakota upon the annual state tax applies only to the items constituting "ordinary expenses"—embraced within the "general appropriation bill." *In re Limitation of Taxation*, 3 S. D. 456. Under a constitutional provision that when the assessed valuation of property in the state shall have reached a certain sum the tax for "state purposes" shall not exceed a rate named, a tax for the support of a state institution must be included in the rate fixed: *People v. Scott*, 9 Colo. 422. A tax levied for the completion and repair of the state penitentiary was held to be a tax for the support of a state charitable institution within the exception to the tax-rate limitation in the constitution: *State v. Board of Com'rs*, 8 Wyo. 104. The levy of a poll tax is not a violation of a provision in the constitution limiting the taxing power of the state to four mills on each dollar of valuation: *People v. Ames*, 24 Colo. 422. A statute providing for the assessment and taxation of railway cars not belonging to railroad companies, and requiring car companies to pay a per cent. state tax on all such cars, was held to be a tax on property, and obnoxious to an article in the constitution limiting a property tax to two mills: *State v. Stephens*, 146 Mo. 662. A statute regulating the levy

legislature cannot dispense either directly or indirectly with restrictions imposed by the fundamental law upon the power of municipal corporations to incur debts or raise money by taxation,¹ but all taxes imposed and all indebtedness incurred beyond the limit specified by the constitution will be invalid.²

of taxes on railroad property by ascertaining from returns in the county clerk's office the average rate levied for school purposes by local boards, and charging to the railroad taxes at such average rate on the proportionate value of railroad property certified to the clerk by the state, does not conflict with a constitutional provision limiting the rate of taxation for school purposes: *State v. Missouri Pac. R. Co.*, 72 Mo. 137; *In re Taxes*, 78 Mo. 596. Where the total state tax levy has exceeded the constitutional limit, reductions in different levies authorized by the same act of the legislature must be made *pro rata* if no preference is given in the act. *People v. State Board*, 20 Colo. 220.

¹ See *Lake County v. Graham*, 130 U. S. 674; *Elyton Land Co. v. Birmingham*, 89 Ala. 477. A constitutional provision fixing the maximum rate of taxation by municipal corporations for educational purposes is violated by a statute prescribing that the state shall levy and collect a tax in excess of the prescribed limit, and pay the same over to the city's board of education: *State v. Southern R. Co.*, 115 Ala. 250. The constitutional limitation upon the power of the legislature to assess and collect a tax for the support of free public schools cannot be exceeded in any form or guise for the support of such schools in a county, and is violated by a statute that attempts to authorize a county to issue bonds for purchasing a school-site, etc.: *State v. L'Engle*, 40 Fla. 392. Where the constitution provides that "county authorities shall never assess taxes the

aggregate of which shall exceed \$1.50 per \$100 valuation . . . unless authorized by a vote of the people," the legislature cannot authorize the issue of warrants to an amount that would require a higher rate of taxation: *In re House Roll*, 31 Neb. 505. A statute authorizing a town to levy a capitation tax of not less than fifty cents for school purposes contravenes a constitutional provision that the general assembly may levy a capitation tax not to exceed \$1 per annum for school purposes, and that counties and corporations may impose a capitation tax not exceeding fifty cents for all purposes: *Robertson v. Preston*, 97 Va. 296. A constitutional provision limiting to a certain sum the amount that boards of supervisors may raise by taxation for constructing or repairing highways is violated by a statute authorizing such boards, by means of road districts, to levy without limit for the construction, etc., of roads: *Davies v. Board of Supervisors*, 89 Mich. 295. An article of the constitution that no county shall levy an annual tax at a rate greater than one-half of one per cent. is not violated by a statute requiring the levy of a special tax of one-tenth of one per cent. for building bridges: *State v. Street*, 117 Ala. 203. Where a city charter had been repealed so that the duty of taxing for what formerly were municipal purposes devolved on the legislature, that body could impose a tax in excess of the constitutional limitation for state purposes: *Hare v. Kennerly*, 83 Ala. 608.

² *Ayers v. McCalla*, 95 Ga. 555; *Schneewind v. Niles*, 103 Mich. 301;

Nor will the fact that a tax in excess of the constitutional rate is levied pursuant to an order of court validate it.¹ And where the constitution provides that the whole tax levy for the ordinary purposes of state and county government cannot ex-

Peterson v. Kittredge, 65 Miss. 33; Arnold v. Hawkins, 95 Mo. 560; Lamar Water, etc. Co. v. Lamar, 128 Mo. 188; State v. Weir, 33 Neb. 35; Young v. Lane, 43 Neb. 812; Chicago, B. & Q. R. Co. v. Nemaha County, 50 Neb. 393; State v. Worth, 116 N. C. 1007; Birkholz v. Dinnie, 6 N. D. 511; Gadsby v. Portland (Or.), 63 Pac. Rep. 14; Hebard v. Ashland County, 55 Wis. 145. A provision in the constitution limiting the power of cities to tax for municipal purposes does not invalidate a statute providing that the expense of renting a building for a court-house in a certain city shall be paid by the city; any tax levied to meet such rent would be a tax for a state purpose: State v. Field, 119 Mo. 593. A constitutional provision limiting the amount which may be raised by taxation, and requiring the levy of a tax sufficient to keep open common schools four months of the year, prohibits exceeding the limit, even though, by keeping within it, the schools cannot be kept open for four months: Barksdale v. Sampson County Com'rs, 93 N. C. 472. Though an act authorizing a tax in excess of the rate fixed by the constitution would be invalid, yet when the rate has been increased by vote of the district as therein authorized, such increased rate becomes the constitutional limit: Chicago & A. R. Co. v. Lamkin, 97 Mo. 496. That a municipality is indebted to the full constitutional limit does not prevent it from levying such taxes as it is authorized to levy by law, and issuing its warrants within the limits of such levy in anticipation of their collection; and, so long as the warrants issued are within the amounts lawfully levied, they do not create an additional debt: Shannon v. Huron, 9 S. D. 356; Lawrence County v. Meade County, 10 S. D. 175. See Fuller v. Heath, 89 Ill. 296. As to what are taxes for county purposes, or taxes levied by county authorities, so as to be within constitutional limitations as to rate, see Wright v. Wabash, St. L. etc. R. Co., 120 Ill. 541; State v. Missouri Pac. R. Co., 123 Mo. 72; Brannon v. County Court, 33 W. Va. 789. Limitation of taxes in Nebraska in counties under township organization: Chicago, B. & Q. R. Co. v. Klein, 52 Neb. 258. The limitation of parish or municipal taxation imposed by the constitution of Louisiana permits the levy up to the limit by either the parish or the corporation: Washington State Bank v. Baillie, 47 La. An. 1471. Construction of constitutional provision as to limit of rate of taxation for city or town purposes: Lamar Water Works v. Lamar, 128 Mo. 188; Lufkin v. Galveston, 63 Tex. 437. Constitutional restriction in Kentucky of rate of indebtedness held to apply to school districts: City Council v. Powell (Ky.), 27 S. W. Rep. 1; Commonwealth v. Louisville & N. R. Co. (Ky.), 48 S. W. Rep. 1092; Perry v. Brown (Ky.), 51 S. W. Rep. 457. The mere fact that a county court levies for county orders of former years outstanding and unpaid does not raise the presumption that they represent indebtedness beyond the constitutional limit: Armstrong v. Taylor County Court, 41 W. Va. 602.

¹ Black v. McGonigle, 103 Mo. 192. The courts cannot compel the levy of a tax by a municipal corporation in

ceed a certain rate, a tax levy for the state is paramount, and counties can only levy taxes to the extent that the power of taxation has not been exhausted by the state's levy.¹

It has been determined that a constitutional provision limiting city taxes to a certain rate of assessed valuation does not apply to special assessments for local improvements;² and the amount of tax authorized by the constitution and statutes of a state to be levied on property as such has no reference to specific taxes which may be imposed on occupations and privileges.³

Taxes may be laid to pay debts contracted prior to the adoption of a constitution without regard to any limitation thereon as to the amount leviable. Such a limitation must be under-

excess of the limit of taxation imposed on the granting power, even at the suit of a creditor whose debt would otherwise remain unpaid, unless the limitation is such an abridgment of the right of taxation existing at the time the debt was incurred as in effect to impair the obligation of a contract: *Corbett v. Portland*, 31 Or. 407. And a limitation imposed by the law under which county bonds are issued upon the rate of taxation that may be levied for their payment, enters into the contract and is obligatory: *State v. Shortridge*, 56 Mo. 126; *State v. Macon County Court*, 68 Mo. 29. See *United States v. Clark County*, 96 U. S. 211; *United States v. Macon County*, 99 U. S. 582; *County Court v. United States*, 109 U. S. 229; *United States v. Town of Cicero*, 50 Fed. Rep. 147; *United States v. Knox County*, 51 Fed. Rep. 880. Purchasers of bonds are bound to take notice of the limitations existing at the time of their purchase upon the taxing power: *Miller v. Hixon* (Ohio), 59 N. E. Rep. 749; *United States v. Town of Cicero*, 50 Fed. Rep. 147, citing *United States v. Macon County*, *supra*.

¹*County Board v. Currituck County Com'rs*, 107 N. C. 110.

²*Gilson v. Board of Com'rs*, 128 Ind. 65; *Board of Com'rs v. Harrell*, 147 Ind. 500; *Gosnell v. Louisville* (Ky.), 46 S. W. Rep. 722; *Barber Asphalt Paving Co. v. Gogreve*, 41 La. An. 231; *Board of Com'rs v. Mialegvich*, 52 La. An. 1291; *Kansas City v. Bacon*, 147 Mo. 259, and cases cited. See *Guthrie v. Territory*, 1 Okl. 188. The constitution of North Carolina in requiring the legislature to provide for the incorporation of cities, and "to restrict their power of taxation, assessment, borrowing money," etc., does not apply to special assessments for local improvements: *Raleigh v. Peace*, 110 N. C. 82. Sewer assessments are not within the five per cent. limit beyond which, under the constitution of Iowa, a city may not increase its indebtedness: *Davis v. Des Moines*, 71 Iowa, 500. The limitation of two mills on the dollar of assessed value, prescribed by statute in Iowa, applies only when the sewerage tax is levied on property without regard to its location, and does not prohibit a greater assessment against that which fronts on a street where a sewer is laid: *Dittal v. Davenport*, 74 Iowa, 66.

³*Goldsmith v. Huntsville*, 20 Ala. 182.

stood as making tacit exception of debts contracted while the power of the state to tax for their payment was unhampered; and it would require terms in the constitution plainly applying the restriction to the previous debts to give it that effect.¹

Some constitutions make it the duty of the legislature, when creating a public corporation and delegating to it the power to tax, to impose restrictions on that power in order that it may not be abused. One object in all written constitutions is the protection of minorities against oppressive action on the part of majorities. Such oppressive action in the case of local bodies is not unlikely to consist in the levy of enormous taxes, or the incurring of enormous debts under the influence of temporary excitements and passions, and perhaps for purposes which cooler reflection would condemn. The mandate that restriction be imposed is, therefore, very proper; but it is addressed to the discretion of the legislature, and there is no extraneous authority to regulate or to enforce its exercise.² It has been

¹ *State v. New Orleans*, 37 La. An. 13, 528; *Stanberry v. Jordan*, 145 Mo. 371; *Trull v. Board of Com'rs*, 72 N. C. 388; *Clifton v. Wynne*, 80 N. C. 145; *Voorheis v. Houston*, 70 Tex. 331. See *Shreveport v. Cole*, 129 U. S. 26; *Mayfield Woolen Mills v. Mayfield* (Ky.), 61 S. W. Rep. 43; *Cobb v. Elizabeth City*, 75 N. C. 1. Under a constitution providing that county authorities shall never assess taxes the aggregate of which shall exceed a certain rate, except in the payment of indebtedness existing at the adoption of the constitution, a tax above such limit to pay such indebtedness is not to be defeated by the fact that prior taxes had been levied for the same purpose, but misappropriated: *Pope County v. Sloan*, 92 Ill. 177. Charter limitation upon a city's power to levy taxes to pay interest upon its bonds, and to create a sinking fund for the principal, are repealed by the adoption of a constitution enacting that any municipal corporation becoming indebted shall, before or at the time, provide for a

direct annual tax sufficient to pay interest as it becomes due and the principal within twenty years; such a provision is self-executing, and authorizes taxes sufficient to meet indebtedness lawfully incurred since its adoption: *East St. Louis v. People*, 124 Ill. 655.

² *People v. Mahaney*, 13 Mich. 481, 487. In this case it was decided that the power of a police board to determine what sums should be raised for its purposes was limited, the statute confining the board to the necessary police expenses. And see *Paine v. Spratley*, 5 Kan. 525; *Bank of Rome v. Rome*, 18 N. Y. 38; *Hill v. Higdon*, 5 Ohio St. 243, 248; *Northern Ind. R. Co. v. Connelly*, 10 Ohio St. 159, 165; *Maloy v. Marietta*, 11 Ohio St. 636. A provision requiring the legislature to restrict the power of municipal taxation is not infringed by an act authorizing a town council to make such assessment on the inhabitants or persons holding property in the town as shall appear expedient: *State v. Town Council*, 39

held that the power of the legislature to restrict municipal indebtedness was not abrogated by a constitutional amendment making certain restriction of such indebtedness;¹ and a constitutional provision that no county shall be denied the right of raising by special tax money to pay for jails, bridges, and other county conveniences does not preclude the legislature's imposing a limit on the amount of taxes which may be levied by boards of supervisors, including such special taxes.² Limitations by statute upon the rate of taxation will be considered hereafter.³

Other restraints on the power of taxation. Great as is the power of the state to tax, the people may limit its exercise by the legislative authority at pleasure. This, however, can only be done by the constitution of the state,⁴ and limitations or restrictions upon the exercise of this essential power of sovereignty can never be raised by implication, but the intention to impose them must be expressed in clear and unambiguous language.⁵ And with the exception of the limitations and re-

S. C. 5. Nor is such a provision violated by an ordinance giving a town "power to levy and collect taxes on all persons and subjects of taxation which it is in the power of the general assembly to tax for state and county purposes: *State v. Irwin*, 126 N. C. 989. Such a provision is complied with in an act for a special street assessment by limiting it to an assessment in the middle of the block upon adjacent property: *Hines v. Leavenworth*, 3 Kan. 186. Such a provision does not deprive the legislature of power to exempt the property of municipalities from assessments: *Milwaukee Electric R. etc. Co. v. Milwaukee*, 95 Wis. 42. A constitutional provision requiring the legislature to provide for the incorporation of cities, and "to restrict their power of taxation, assessment, borrowing money," etc., does not apply to special assessments for local improvements: *Raleigh v. Peace*, 110 N. C. 32. A district irrigation law was held not unconstitu-

tional upon the ground that the power thereby conferred upon districts to levy taxes was without limitation, it being restricted to revenue sufficient to meet the obligations voluntarily assumed by the taxpayers themselves: *Board of Directors v. Collins*, 46 Neb. 411. A provision in the constitution giving the legislature authority to restrict the power of cities in taxation and assessments, and to prevent abuses in assessments, will not prevent passing laws to limit the power of courts to set aside assessments: *Matter of Mead*, 74 N. Y. 216.

¹ *State v. Tomahawk Common Council*, 96 Wis. 73.

² *Peterson v. Kittredge*, 65 Miss. 33.

³ *Post*, ch. XI.

⁴ *Board of Education v. McLandsborough*, 36 Ohio St. 227; *Gilson v. Board*, 128 Ind. 65; *Com'rs v. Harrell*, 147 Ind. 500.

⁵ *Lane County v. Oregon*, 7 Wall. 71; *State v. Parker*, 32 N. J. L. 426,

strictions in this chapter mentioned or referred to, it must be taken as generally true that the power to tax is limited in extent, in purpose, and in methods only by the will of the state as expressed in its laws.¹

Restrictions upon federal taxing power. The taxing power of congress is very extensive. It is given in the national constitution with only one exception and only two qualifications:² no tax or duty can be laid on articles exported from any state;³ capitation or other direct⁴ taxes must be laid in proportion to the federal census or enumeration, according to which the representation of the states in the popular branch of congress is determined;⁵ and all duties, imposts,⁶ and ex-

435; *Eyre v. Jacob*, 14 Grat. 422, 426. In the absence of express, affirmative provision, prohibition of legislative power is not implied from the mere silence of the constitution in regard to any subject: *Southern R. Co. v. St. Clair County*, 124 Ala. 491. A constitutional provision authorizing one county to impose special taxes for school purposes does not prevent the legislature from passing an act permitting another county to levy a local tax for such purposes: *Ibid.* If the constitution of a state contains no restriction on the legislative power to tax, except as to "property," the legislature has plenary power as to other subjects of taxation: *Capital City Water Co. v. Board of Revenue*, 117 Ala. 303.

¹ *Schenck v. Jeffersonville*, 152 Ind. 204. And see *ante*, p. 9.

² *License Tax Cases*, 5 Wall. 462; *Lane County v. Oregon*, 7 Wall. 71; *Insurance Co. v. Soule*, 7 Wall. 433; *Veazie Bank v. Fenno*, 8 Wall. 433. See *Ward v. Maryland*, 12 Wall. 418.

³ U. S. Const., art. I, § 9, par. 5. A tonnage duty on foreign vessels is not a tax on exports, and congress may lay such a duty on such vessels: *Aguirre v. Maxwell*, 3 Blatch. 140. An act of congress requiring a fee stamp to separate and identify to-

bacco intended for exportation, thus relieving it from the tax to which other tobacco was subjected, did not impose a tax or duty on exports within the interdiction of the federal constitution: *Pace v. Burgess*, 92 U. S. 372; *Turpin v. Burgess*, 117 U. S. 504. But the stamp tax imposed on a foreign bill of lading by the act of congress of June 13, 1898, is in substance and effect equivalent to a tax on the articles included in that bill of lading, and therefore a tax on exports prohibited by the constitution: *Fairbank v. United States*, 181 U. S. 283.

⁴ As to what are direct taxes within the meaning of this clause of the federal constitution, see *ante*, pp. 10, 11.

⁵ U. S. Const., art. I, § 9, par. 4.

⁶ "An 'impost' is a duty on imported goods and merchandise. In a larger sense it is any tax or imposition; and 'duties and imposts' were probably intended to comprehend every species of tax or contribution not included in the ordinary terms 'taxes and excises:'" *Insurance Co. v. Soule*, 7 Wall. 433. "An impost, or a duty on imports, is a custom or tax levied on articles brought into a country:" *Brown v. Maryland*, 12 Wall. 418.

cises¹ must be uniform² throughout the United States.³ "There are, indeed," to use the words of an opinion of the federal supreme court, "certain virtual limitations, arising from the principle of the constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the states, or if exercised for ends inconsistent with the limited grants of power in the constitution."⁴

It has been decided that congress has power to impose on ship-owners a tax of a certain sum for each passenger, not a citizen of this country, who is brought into one of our ports. The power to pass such acts is not in the states, but in the United States; and the burden imposed is not strictly a tax, but is laid under the power to regulate immigration, and in the very act of exercising that power.⁵ It has also been held by the supreme court of the United States that congress, in

¹ "Excise" is defined to be an inland imposition, sometimes upon the consumption of the commodity, and sometimes upon the direct sale; sometimes upon the manufacturer, and sometimes upon the consumer: "Insurance Co. v. Soule, 7 Wall. 433.

² The uniformity here required is a geographical uniformity, synonymous with the expression "to operate uniformly throughout the United States:" Knowlton v. Moore, 178 U. S. 41; State v. Travelers' Ins. Co. (Conn.), 47 Atl. Rep. 299. A tax is uniform, within the meaning of the federal constitution, when it operates with the same effect in all places where the subject of it is found; and it is not wanting in such uniformity because the thing taxed is not equally distributed in all parts of the United States: Head-Money Cases, 112 U. S. 580. A tax upon distillers is uniform in its operation if it is assessed upon all distillers wherever they are, not establishing one rule for one distiller and a different rule for another, but the same rule for all alike: United States v. Singer, 15 Wall. 111, 121. The uniformity requisite is that of

the law, not of its enforcement; so held of the federal internal revenue law during the rebellion: United States v. Riley, 5 Blatch. 204. Against the objection that the tax upon sales at an exchange or board of trade was not "uniform throughout the United States," it was decided that such sales constituted a proper basis for a classification which excluded from taxation all sales made elsewhere: Nicol v. Ames, 173 U. S. 509. This requirement of uniformity is not violated by the act of congress of June 13, 1898, levying succession duties, which exempts legacies and distributive shares in personal property below \$1,000, classifies the rate of tax according to the relationship or absence of the relationship of the testator to the deceased, and provides for a rate progressing by the amount of the legacy or share: Knowlton v. Moore, 178 U. S. 41.

³ U. S. Const., art. I, § 8, par. 1.

⁴ Lane County v. Oregon, 7 Wall. 71; Veazie Bank v. Fenno, 8 Wall. 533, 541. And see *ante*, pp. 133, 134.

⁵ Head-Money Cases (Edge v. Robertson), 112 U. S. 580.

imposing a tax upon sales at an exchange or board of trade, does not illegally interfere with the internal commerce of the states by requiring the person selling to make a written memorandum of the contract.¹ Congress has full power to impose a stamp tax upon agreements to sell stock and agreements of sale of stock;² and, although the power to regulate successions is lodged solely in the several states, congress has authority to tax the transmission or receipt of property upon the owner's death.³ The general rule is laid down by the supreme court of the United States in a recent case where it is said that "subject to a compliance with the limitation of the constitution the taxing power of congress extends to all the usual objects of taxation."⁴

¹Treat v. White, 181 U. S. 264. This case holds that a "call" for stock which contains an absolute promise to sell the stock at any time within fifteen days at a certain price, is an "agreement to sell" within the meaning of the war revenue act of June 13, 1898, requiring a stamp tax of two

cents on each \$100 of face value or fraction thereof.

²Nicol v. Ames, 173 U. S. 509.

³Knowlton v. Moore, 178 U. S. 41.

⁴Knowlton v. Moore, 178 U. S. 41, 58. As to the general power of congress to tax, see United States v. McKinley, 4 Brewst. 246.

CHAPTER IV.

THE PURPOSES FOR WHICH TAXES MAY BE LAID.

The general rule. It is implied in all definitions of taxation that taxes can be levied for public purposes only.¹ Differences of opinion frequently arise concerning the power to impose taxation in particular cases, but all writers who treat

¹ *Olcott v. Fond du Lac County*, 16 Wall. 678; *Loan Assoc. v. Topeka*, 20 Wall. 655; *Jarrott v. Moberly*, 103 U. S. 580; *Kelly v. Pittsburg*, 104 U. S. 81; *Osborne v. Adams County*, 106 U. S. 181; *Parkersburg v. Brown*, 106 U. S. 487; *Osborne v. Adams County*, 109 U. S. 1; *Cole v. La Grange*, 113 U. S. 1; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112; *Citizens', etc. Sav. Assoc. v. Topeka*, 3 Dill. 376; *Sutherland-Innes Co. v. Evart*, 86 Fed. Rep. 397, 30 C. C. A. 305; *Mobile v. Dargan*, 45 Ala. 310; *Stockton, etc. R. Co. v. Stockton*, 41 Cal. 173; *Bradley v. New York, etc. R. Co.*, 21 Conn. 305; *Ferris v. Vannier*, 6 Dak. 186; *Gurnee v. Chicago*, 40 Ill. 165; *Scammon v. Chicago*, 44 Ill. 269; *Bissell v. Kankakee*, 64 Ill. 249; *English v. People*, 96 Ill. 566; *Anderson v. Kerns Draining Co.*, 14 Ind. 302; *Schenck v. Jeffersonville*, 152 Ind. 204; *Hanson v. Vernon*, 27 Iowa 28; *Clark v. Des Moines*, 19 Iowa 199; *Warren v. Henly*, 31 Iowa 31; *State v. Osawkee Tp.*, 14 Kan. 418; *Spencer v. Joint School Dist.*, 15 Kan. 262; *Central Branch, etc. R. Co. v. Smith*, 23 Kan. 745; *Cypress Pond Draining Co. v. Hooper*, 2 Metc. (Ky.) 350; *State v. Clinton*, 26 La. An. 561; *Opinion of Justices*, 58 Me. 590; *Allen v. Jay*, 60 Me. 124; *State v. Western Union Tel. Co.*, 73 Me. 518; *Industrial School v. Brown*, 45 Md. 335; *Baltimore & E. S. R. Co. v. Spring*, 80 Md. 510; *Revell v. Annapolis*, 81 Md. 1; *Lowell v. Oliver*, 8 Allen 247; *Freeland v. Hastings*, 10 Allen 570; *Dorgan v. Boston*, 12 Allen 223; *Lowell v. Boston*, 111 Mass. 454; *People v. Salem T'p Board*, 20 Mich. 452; *Bay City v. State Treasurer*, 23 Mich. 499; *Butler v. Saginaw Supervisors*, 26 Mich. 22; *Attorney-General v. Bay Supervisors*, 34 Mich. 46; *Silsbee v. Stockle*, 44 Mich. 561; *Anderson v. Hill*, 54 Mich. 477; *Chaffee's Appeal*, 56 Mich. 244; *Davis v. Ontonagon Supervisors*, 64 Mich. 404; *Clee v. Sanders*, 74 Mich. 692; *Dodge v. Van Buren Circuit Judge*, 118 Mich. 189; *Attorney-General v. Pingree*, 120 Mich. 550; *Michigan Sugar Co. v. Auditor General*, 124 Mich. 674; *State v. Foley*, 30 Minn. 350; *Coates v. Campbell*, 37 Minn. 498; *William Deering & Co. v. Peterson*, 75 Minn. 118; *Lien v. Board of Supervisors*, 80 Minn. 58; *Hitchcock v. St. Louis*, 49 Mo. 484; *State v. Switzler*, 143 Mo. 287; *Bradshaw v. Omaha*, 1 Neb. 16; *State v. Cornell*, 53 Neb. 556; *Gove v. Epping*, 41 N. H. 539; *Baldwin v. Fuller*, 39 N. J. L. 576; *Elizabethtown Water Co. v. Wade*, 59 N. J. L. 78; *Matter of New York*, 11 Johns. 80; *Bloodgood v. Mohawk, etc. R. Co.*, 18 Wend. 9; *People v. Flagg*, 46 N. Y. 401; *People v. Batchellor*, 53 N. Y. 128; *Weismer v. Douglas*, 64 N. Y. 91; *Stuart v. Palmer*, 74 N. Y. 183; *Spencer v.*

the subject theoretically and all jurists agree in the fundamental requirement that the purpose shall be public, and they differ, when they differ at all, upon the question whether the particular purpose proposed is within the requirement.¹ It is also agreed that the determination what is and what is not a public purpose belongs in the first instance to the legislative department.² It belongs there because the taxing power is a branch of the legislative, and the legislature cannot lie under the necessity of requiring the opinion or the consent of another department of the government before it will be at liberty to exercise one of its acknowledged powers. The independence of the legislature is an axiom in government; and to be independent, it must act in its own good time, on its own judgment, influenced by its own reasons, restrained only as the people may have seen fit to restrain the grant of legislative power in making it. The legislature must, consequently, determine for itself, in every instance, whether a particular purpose is or is not one which so far concerns the public as to render taxation admissible.³

Merchant, 100 N. Y. 585; *Bush v. Board of Supervisors*, 159 N. Y. 212; *In re Tuthill*, 163 N. Y. 133; *Reeves v. Wood County*, 8 Ohio St. 333; *Seely v. Sebastian*, 4 Oregon 25; *Sharpless v. Philadelphia*, 21 Pa. St. 147; *Philadelphia Assoc. v. Wood*, 39 Pa. St. 73; *Hammett v. Philadelphia*, 65 Pa. St. 152; *Feldman v. Charleston*, 23 S. C. 57; *Shannon v. Huron*, 9 S. D. 356; *Louisville, etc. R. Co. v. Davidson County*, 1 Sneed 637; *Kerr v. Wooley*, 3 Utah 456; *Williams v. School Dist.*, 33 Vt. 271; *Tyler v. Beacher*, 44 Vt. 648, 651; *Bennington v. Park*, 50 Vt. 178; *First Nat. Bank v. Concord*, 50 Vt. 257; *Knowlton v. Rock County*, 9 Wis. 410; *Soens v. Racine*, 10 Wis. 271; *Hasbrook v. Milwaukee*, 13 Wis. 37; *Brodhead v. Milwaukee*, 19 Wis. 624; *Curtis v. Whipple*, 24 Wis. 350; *Whiting v. Sheboygan, etc. R. Co.*, 25 Wis. 167; *Wauwatosa v. Gunyon*, 25 Wis. 271; *State v. Tappan*, 29 Wis. 664; *Donnelly v. Decker*, 58 Wis. 461. In a constitutional provision that "taxes may be levied

and collected for public purposes only," the word "tax" includes every character and kind of tax, general or special; and an excise on the right to receive property by devise or inheritance by state regulations is a tax within such provision; *State v. Switzler*, 143 Mo. 287. Only for public purposes can the legislature authorize a city or town to tax its inhabitants: *Prince v. Crocker*, 166 Mass. 347. The delegated power of taxation can be used only for a public or governmental purpose as distinguished from a private purpose: *Shannon v. Huron*, 9 S. D. 356. The legislative imposition of a tax-fee of six dollars for the benefit of the supreme court library in each case decided by that court is a legitimate exercise of the taxing power: *Swann v. Kidd*, 71 Ala. 431.

¹ *Phoenix Assur. Co. v. Fire Department*, 117 Ala. 631.

² *State v. Cornell*, 53 Neb. 556.

³ *Booth v. Woodbury*, 32 Conn. 118; *Sharpless v. Philadelphia*, 21 Pa. St.

But it is also generally admitted that the legislative determination on this subject is not absolutely conclusive. It may be sufficiently so to put the administrative machinery of the state in motion; but when the exaction is made of an individual, and the power of the state is made use of to compel submission, he has always the right to invoke the protection of the law. And an appeal to the law for protection of individual property must necessarily render the question, which lies at the foundation of the demand, a judicial question, upon which the courts cannot refuse to pass judgment. It has been forcibly, and yet very truly, said that an unlimited power in the legislature to make any and every thing lawful which it might see fit to call taxation, would, when plainly stated, be an unlimited power to plunder the citizen.¹ In attempting to exercise the right, in any particular case, the legislature merely asserts its jurisdiction to act; but questions of jurisdiction are not usually concluded by a decision in its favor made by the party claiming it; they necessarily remain open, and may be disputed anywhere. This is as true of courts as it is of the legislature; jurisdiction comes from the law, and is not obtained by any tribunal through a simple assertion that it exists. When, therefore, the question of the validity of taxation becomes judicial, if it shall appear that the exaction is made for a purpose not public, the right of the individual to protection is clear. Such an exaction is not within the competency of the legislative power, and the attempt to enforce it, however honestly made, could only be an attempt to take property from its possessor under an authority which the law of the land does not recognize. "The theory of our governments, state and national," it has been truly said, "is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited

147; *Harris v. Dubleucet*, 30 La. An. 662; *Thomas v. Leland*, 24 Wend. 65; *Williams v. School Dist.*, 33 Vt. 271; *Bennington v. Park*, 50 Vt. 178; *Brodhead v. Milwaukee*, 19 Wis. 624.

¹ *Loan Assoc. v. Topeka*, 20 Wall. 655; *Cole v. La Grange*, 113 U. S. 1; *Morford v. Unger*, 8 Iowa 82, 92; *Hanson v. Vernon*, 27 Iowa 28; *People v. Salem T'p Board*, 20 Mich. 452, 459; *Hooper v. Emery*, 14 Me. 375, 379; *Allen v. Jay*, 60 Me. 124, 139; *Talbot v. Hudson*, 16 Gray 417, 421; *Freeland v. Hastings*, 10 Allen 570, 575; *State v. Cornell*, 53 Neb. 556; *In re Flatbush*, 60 N. Y. 398; *Tyson v. School Directors*, 51 Pa. St. 9; *Washington Av.*, 69 Pa. St. 352.

and defined powers. There are limitations on such powers which grow out of the essential nature of all free governments; implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the same. . . . Of all the powers conferred upon government, that of taxation is most liable to abuse. Given a purpose or object for which taxation may lawfully be used, and the extent of its exercise is in its very nature unlimited. It is true that express limitation on the amount of tax to be levied or the things to be taxed may be imposed by constitution or statute, but in most instances for which taxes are levied — as the support of government, the prosecution of war, the national defense — any limitation is unsafe. The entire resources of the people should, in some instances, be at the disposal of the government. The power to tax is, therefore, the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people. . . . This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised. To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it on favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.”¹

Presumption in favor of legislation. It is not inconsistent with this doctrine that in every instance the highest consideration should be paid to the determination of the legislature that a tax should be laid. It is not lightly to be assumed that its members have come to the examination of the subject with any other than public motives, or that they have failed

¹ Miller, J., in *Loan Assoc. v. Topeka*, 20 Wall. 655, 663. And see *Freeland v. Hastings*, 10 Allen 570, 575; *Hopkinton*, 45 N. H. 9; *Curtis v. Whipple*, 24 Wis. 350; *People v. Flagg*, 46 N. Y. 401; *Tyler v. Beacher*, 44 *Hooper v. Emery*, 14 Me. 375, 379; *Vt.* 648, 651; *Matter of Market St.*, 49 *Allen v. Jay*, 60 Me. 124; *Gove v. Cal.* 546. *Epping*, 41 N. H. 539; *Crowell v.*

to give it due investigation or reflection. The presumption on the other hand must always be that they have considered it with honesty and fair purpose, and that their action is the result of their deliberate judgment. And with all these presumptions tending to support the legislative action, it would seem but reasonable and proper that the courts should support it when not clearly satisfied that an error has been committed.¹ This is the general rule in constitutional law when the validity of legislation is involved,² and it is applicable with peculiar force to the case of a legislative decision upon the purpose for which a tax may be laid.

For, in the first place, there is no such thing as drawing a clear and definite line of distinction between purposes of a public and those of a private nature.³ Public and private interests are so commingled in many cases that it is difficult to determine which predominates; and the question whether the public interest is so distinct and clear as to justify taxation is

¹Hanson v. Vernon, 27 Iowa 28; State v. Clinton, 26 La. An. 561; State v. Switzler, 143 Mo. 287; Board of Com'rs v. Collins, 46 Neb. 884; State v. Cornell, 53 Neb. 556; Cummings v. Hyatt, 54 Neb. 35; Holt v. Antrim, 64 N. H. 284; State v. Womble, 112 N. C. 862; Feldman v. Charleston, 23 S. C. 57. A township tax levied to pay railroad-aid bonds will be presumed to have been levied for the payment of bonds issued before the constitutional prohibition of such bonds: State v. Mississippi River Bridge Co., 134 Mo. 321.

²Story on Const., § 1482, and notes; Sedg. on Const. and Stat. L. 414; Cooley, Const. Lim. (5th ed.) 218, and numerous cases cited in notes.

³*General Purposes of Taxation.* These are enumerated by Adam Smith as follows: 1. The defense of the commonwealth. This includes the expenses of forts, arsenals, ships of war, a standing army and its equipment, the arming and disciplining of the militia, military roads, and means of transportation of troops, etc. 2. The administration

of justice. 3. The expense of public works and public institutions, of which he enumerates — (a.) Public works and institutions for facilitating the commerce of the society — (b.) Institutions for the education of youth — (c.) Institutions for the instruction of people of all ages. 4. The expense of supporting the dignity of the sovereign. Doctor Wayland enumerates more perfectly the purposes for which the public funds are most commonly expended as follows: 1. The expenses for the support of civil government, including in these the compensation of judicial, legislative, and executive officers. 2. Expenses for the purposes of education, classified by him as common education and scientific education. 3. Expenses for maintaining religious worship, which, however, he considers inadmissible. 4. Expenses for the improvement of coasts and harbors, and whatever is necessary for the security of external commerce, and for roads, canals, etc. 5. Expenses of pauperism. 6. The expenses of war.

often embarrassing to the legislature, and not less so to the judiciary.

All attempts to lay down general rules whereby the difficulties may be solved have seemed, when new and peculiar cases arose, only to add to the embarrassment instead of furnishing the means of extrication from it.¹ Money for a particular purpose may be raised by tax, it is said in one case, if there be the *least possibility* that it will be promotive in any degree of the public welfare.² "A tax law," it is said in another case, "must be considered valid unless it be for a purpose in which the community taxed has no interest; when it is apparent that the burden is imposed for the benefit of others, and where it would be so pronounced at first blush."³ And still another presents the same idea in language but little different: "To justify the court in arresting the proceedings and in declaring the tax void, the absence of all possible public interest in the purpose for which the funds are raised must be clear and palpable; so clear and palpable as to be perceptible by every mind at first blush."⁴ These are very strong and sweeping assertions, but they are supported by many others equally emphatic and comprehensive, which are to be met with in the adjudications of courts.⁵ The very emphasis, however, with which the principle

¹ Phoenix Assur. Co. v. Fire Department, 17 Ala. 631.

² Booth v. Woodbury, 32 Conn. 118, 128, per Butler, J. A statement so strong in terms as to be very liable to convey to others a meaning not present in the judicial mind.

³ Sharpless v. Philadelphia, 21 Pa. St. 147, 174, following Cheaney v. Hooser, 9 B. Monr. 330, 345. And see Guilford v. Supervisors of Chennango, 13 N. Y. 143, 149; English v. Oliver, 28 Ark. 317; State v. Cornell, 53 Neb. 556.

⁴ Brodhead v. Milwaukee, 19 Wis. 624, 652, per Dixon, Ch. J. And see Walker v. Cincinnati, 21 Ohio St. 14; Speer v. School Directors, 50 Pa. St. 150; Kelly v. Pittsburgh, 85 Pa. St. 170.

⁵ "The exercise of the taxing power must become wanton and unjust —

be so grossly perverted as to lose the character of a legislative function — before the judiciary will feel themselves entitled to interpose on constitutional grounds. To arrest the legislation of a free people, especially in reference to burdens self-imposed for the common good, is to restrain the popular sovereignty, and should have clear warrant in the letter of the fundamental law." Schenley v. Allegheny City, 25 Pa. St. 128, 130, per Woodward, J. See State v. Switzler, 143 Mo. 287; Durach's Appeal, 62 Pa. St. 491, 495. That the motive of the legislature, in imposing a privilege tax on railroad companies "not paying an *ad valorem* tax," was to deprive them of their advantage of exemption from *ad valorem* taxation cannot be urged against the validity of the act. The only concern of

is declared renders it peculiarly liable to mislead, unless it is examined in the light of the adjudicated cases in which it has been applied, generally with explanations, and often with necessary qualifications.¹

Grade of the government which taxes. In considering the legality of the purpose of any particular tax, a question of first importance must always concern the grade of the government which assumes to levy it. The "public" that is concerned in a legal sense in any matter of government is the public the particular government has been provided for; and the "public purpose" for which that government may tax is one which concerns its own people, and not some other people having a government of its own, for whose wants taxes are laid. There may, therefore, be a public purpose as regards the federal Union, which would not be such as a basis for state taxation, and there may be a public purpose which would uphold state taxation, but not the taxation which its municipalities would be at liberty to vote and collect. The purpose must in every instance pertain to the sovereignty with which the tax originates; it must be something within its jurisdiction so as to jus-

courts is the validity of the tax; all else lies beyond their jurisdiction: *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684. When county commissioners have legislative power in respect to taxes for local purposes, their discretion in deciding how much of the revenue shall be devoted to one purpose, and how much to others, will not be controlled: *Long v. Com'rs of Richmond*, 76 N. C. 273. And even though the purpose in view in levying the tax was an improper one, yet this will not preclude the collection of the tax, and its appropriation to proper objects: *Ibid.*

¹This is forcibly put by *Dixon*, Ch. J., in *Whiting v. Sheboygan, etc. R. Co.*, 25 Wis. 167, 180. If a tax is laid for a public and also for a private purpose, it is void for excess in legislative authority. In a drainage law provision was made for the os-

tensible purpose of the act, and also for the storage of debris from mines. The court says: "The storage of debris is, in its nature, a private enterprise, in which the few only are interested. The drainage of a state is a public purpose, in which the public may be interested. To promote a public purpose by a tax levy upon the property in the state is within the power of the legislature; but the legislature has no power to impose taxes for the benefit of individuals connected with a private enterprise, even though the private enterprise might benefit the local public in a remote or collateral way:" *People v. Parks*, 58 Cal. 624, 639. Where the purpose for which a statute provides taxation is partly public and partly private, and the amount to be raised for each cannot be distinguished and severed, the act is void: *Coates v. Campbell*, 37 Minn. 498.

tify its making provision for it. The rule is applicable to all the subordinate municipalities; they are clothed with powers to accomplish certain objects, and for those objects they may tax, but not for others, however interesting or important, which are the proper concern of any other government or jurisdiction. State expenses are not to be provided for by federal taxation, nor federal expenses by state taxation, because in neither case would the taxation be levied by the government upon whose public the burden of the expenses properly rests. To provide for such expenses would consequently not be a purpose in which the people taxed would in a legal sense be concerned. This is the general rule; some apparent exceptions there unquestionably are, where the nation and the state have common interests and a common duty, such as may require the action of both, and would justify the levy of a tax by either or both to accomplish the one object. An illustration would be the case of a tax for the common defense against the public enemies, which might be levied by each, because the purpose would, in a strict sense, be public as to both.

The grade of the government is also important for another reason. A municipal government is one of delegated and limited powers, whose authority will receive a somewhat strict construction, rendering it necessary that it shall find the purposes for which it may tax clearly and unmistakably confided to its charge by the state. It is not sufficient that a purpose may seem to belong properly to its jurisdiction, or that the court may believe the municipality ought to have had authority over it; but it must be seen that the authority has been conferred in fact. It is otherwise with the state, which has all the power of taxation not withheld from exercise in the making of the state and federal constitutions, and in support of whose action, consequently, the most liberal amendments are to be made. It is otherwise with the federal Union also; for though its powers are not general like those of the state, but are limited and defined by the federal constitution, yet as they concern the most important matters of government and relate to subjects not of domestic concern merely, but of international intercourse, and to other matters which sometimes call for broad and comprehensive views, and make a policy of liberal expenditures wise and statesmanlike, it would be neither

reasonable nor prudent to subject its action in the matter of taxation to critical rules. That which it decides to be an object of public expenditure must generally be so accepted, and error in its action must be corrected by discussion and through public opinion and the elections.

General expenses of government. Every government must provide for its general expenses by taxation; and in these are to be included the cost of making provision for those public needs or conveniences for which, by express law or by general usage, it devolves upon the particular government to supply. As regards the federal government, a general outline of these is to be found in the federal constitution. That government is charged with the common defense of the Union, and for that defense it may raise and support armies, create and maintain a navy, build forts and arsenals, construct military roads, etc. It has a like power over the general subject of postoffices and post-roads, and over other subjects enumerated in the federal constitution and subjected to its authority. It may contract debts, and it must provide for their payment. For all national purposes it may levy taxes, and its power in so doing to select the subjects of taxation and to determine the rate and the methods is as full and complete as can exist in any sovereignty whatsoever, with the exceptions which are prescribed by the constitution itself.¹

Some taxes levied by the federal government are directly calculated and intended to benefit private individuals. For an illustration, it gives bounty land or pensions to those who have performed military or naval services for the country, notwithstanding it has made no promise, and is consequently under neither a legal nor a moral obligation to do so. But the primary object in all such bounties is not the private but the public interest. To show gratitude for meritorious public services in the army and navy by liberal provision for those who have performed them is not only proper in itself, but it may reasonably be expected to have a powerful influence in inciting others to self-denying, faithful, and courageous services in the future, when the government, which is so ready to be generous as well as just, shall have need of their assistance. The

¹ See, as to such exceptions, *ante*, pp. 178, 179.

same may be said of a like recognition of valuable public services rendered by other persons: the question in every case is not one of power, but of prudence and public policy.¹

Imposts laid on any other consideration than the production of revenue have been often objected to as being only colorable taxation, and therefore not warranted by the taxing power. But where the impost produces revenue, it is a tax, and it cannot be invalid merely because, if laid in some other way or at some other rate, the revenue would have been greater.² Nor

¹Taxation for the benefit of firemen who have performed duty until they have earned exemption is lawful, though by the constitution the state is prohibited from giving the money of the state "to or in aid of any association, corporation, or private undertaking," it being paid in discharge of a moral obligation resting upon the state: *Trustees of Firemen's Fund v. Roome*, 93 N. Y. 313; *Fire Dep't v. Helfenstein*, 16 Wis. 142. In *Phoenix Assur. Co. v. Fire Department*, 117 Ala. 631, it is held that a statute requiring fire insurance companies to pay an annual fee to the city fire department, to enable it to reward superior skill and exertion in its members, and provide for sick and disabled members or their families, is valid. And in *Firemen's Benev. Assoc. v. Lounsbury*, 21 Ill. 510, the supreme court of Illinois held that the legislature may provide that foreign insurance companies shall be burdened for the benefit of a firemen's benevolent association, and that the revenue resulting therefrom need not be paid into the public treasury. But in Indiana, a statute creating a firemen's pension fund, and providing that foreign insurance companies shall pay part of their net income to the fund, has been held not to be for a public purpose: *Henderson v. London & L. Ins. Co.*, 135 Ind. 23. Where a statute provided that every agent of an insurance company should at certain times pay

to the treasurer of a county or city a percentage of the premiums received on property insured by him within the county or city, the money to constitute a firemen's relief fund, to be expended by the governing body of the fire department of the county or city, it was held that the object of the fund, if it was a public one at all, was a municipal purpose: *San Francisco v. Liverpool, etc. Ins. Co.*, 74 Cal. 113.

²"No doubt all taxation should be general and, as far as practicable, equal. Legislation either to benefit or burden particular classes, under the idea that it is for the good of the state at large, infringes upon the natural and guarantied right of acquiring, possessing, and protecting property, subject to fair and equal contributions to the just and necessary expenses of government in the exercise of its proper and legitimate functions. A government which assumes the office of controlling and directing the lawful industry of the citizens into the channels which it may choose to deem best assumes what does not legitimately belong to it. Some states in modern times, in undertaking to find work for the people, have discovered that it was a sure way to make work for themselves. But we cannot sit in judgment upon the wisdom or expediency of laws. An act of the legislature must clearly transcend the limits of the power confided to that depart-

can the motives which have influenced the selection of objects for taxation, or determined the rate, be inquired into for the purpose of invalidating it: proper motives in the legislature are always conclusively presumed.¹ If, therefore, it should be conceded that a tariff of duties discriminating between articles of merchandise in order to protect or encourage particular branches of home industry was unwise, impolitic, or contrary to the spirit of the federal constitution, it could not for that reason be treated as invalid. Of public policy in matters of federal taxation the congress must judge, and the spirit of the constitution is supposed to address itself to the legislature rather than to the courts. Every tax must discriminate; and only the authority that imposes it can determine how and in what directions. The motives that influence the members of a legislative body raise questions between them and their constituents alone.² Indeed, it is only when a burden is imposed which it is impossible to bear; one which is laid not for the purpose of producing revenue, but in order to accomplish some ulterior object which the general government lacks the power otherwise to accomplish, that a case is presented which really can be said to be fairly debatable on the score of power. Such a burden, it may be said with much force, comes under no definition of the word "tax" which is recognized in public law. It demands no contributions for the service of the state; it adds and is expected to add nothing to the public revenue. It annihilates that upon which it is levied, and it differs from confiscation only in this, that confiscation seizes something of value, and appropriates it to the needs of the government, thus making it useful, while this seizes it for the purpose of destruction only. But even in such cases, it is held that the presump-

ment of government, or, more properly speaking, it must violate some prohibition, either express or necessarily implied, either of the federal or state constitution, before it can be pronounced by the judicial department to be unconstitutional and void." *Sharswood, J., in Durach's Appeal*, 62 Pa. St. 491, 495.

¹*Goddin v. Crump*, 8 Leigh 120, 154; *People v. Draper*, 15 N. Y. 532, 545, 555; *Sunbury & Erie R. Co. v.*

Cooper, 33 Pa. St. 278; *Wright v. De-frees*, 8 Ind. 298, 302; *Baltimore v. State*, 15 Md. 376; *Newman, Ex parte*, 9 Cal. 502; *Lyon v. Morris*, 16 Ga. 480; *McCardle, Ex parte*, 7 Wall. 506, 514; *Johnson v. Higgins*, 3 Met. (Ky.) 566; *Flint, etc. P. R. Co. v. Woodhull*, 25 Mich. 99, 103; *State v. Hays*, 49 Mo. 604, 607; *State v. Fagan*, 22 La. An. 545.

²See Story on Const., § 1677; *Veazie Bank v. Fenno*, 8 Wall. 533, 548.

tion that correct motives have controlled the legislative action must preclude the judiciary from looking for a purpose in legislation beyond what the language imports.¹ A like presumption supports the action of municipal legislative bodies.²

It is sometimes a requirement of law that taxes should be raised for purposes specified in advance, to which alone the moneys can then be devoted; but in the absence of any constitutional or legislative requirement on the subject, the local authorities are not thus restricted.³

Public purposes in general. For the most part the term "public purposes" is employed in the same sense in the law of taxation and in the law of eminent domain. But both in the legislation of the country and in the judicial decisions some differences have been recognized, and, as we think, with good reason. An appropriation under the right of eminent domain is only a forced sale which one is compelled to make for the public good. As the consideration paid on such sale is pecuniary, and is supposed to be equal to the full value of what is taken, no injustice results to him whose property is appropriated. On the other hand, no pecuniary consideration is paid when money is demanded under the power of taxation; and if the money is taken in order to be appropriated to private purposes, the benefits which the taxpayer might be presumed to receive from its being used for the needs of the government, to enable it to protect and defend him and give him the benefits of organized society in common with its other citizens, are not realized. In such a case the supposed consideration to the individual for taking his property wholly fails. A more liberal construction of public purposes is consequently admissible in the law of eminent domain, where an error in the direction of too great liberality could not be seriously detrimental, than in the law of taxation, where a like error would result in injustice which might be seriously harmful.

There are provisions in a number of the state constitutions

¹ *Veazie Bank v. Fenno*, 8 Wall. 278; *People v. Draper*, 15 N. Y. 532; 533, 548; *Doyle v. Conn. Ins. Co.*, 94 U. S. 535; *Luehrman v. Taxing District*, 2 Lea 425; *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684; *Sunbury & Erie R. Co. v. Cooper*, 33 Pa. St. 278; *People v. State*, 15 Md. 376.

² *Freeport v. Marks*, 59 Pa. St. 259; *Buell v. Ball*, 20 Iowa 282.

³ *Long v. Com'rs of Richmond*, 76 N. C. 273.

under which one needing a private way across the land of another may have the way established against the will of the owner, by making out his necessity to the satisfaction of a proper public officer, or of a jury, and by paying such damages as shall be assessed against him. This is an extension of the law of eminent domain,¹ but it has its foundation in public policy, and the appropriation is supposed to accomplish a public purpose in bringing into use a parcel of real property which otherwise would be or might be practically inaccessible. A proposition to make such a private way at the public expense by means of an exercise of the power of taxation would, by general consent, be pronounced wholly inadmissible, as being a proposition to appropriate the public revenues to a private purpose. The difference in the two cases is felt and appreciated the moment they are stated, and the wisdom of recognizing it in legislation has also been very generally felt. So there are some cases in which, without the aid of constitutional provisions, it has been held that individual property may be appropriated under the law of eminent domain, in order to enable private parties to establish and carry on their business enterprises, notwithstanding it would be incompetent to aid the same enterprises by payments from the public treasury. An illustration is the case of lands appropriated for the purpose of creating a reservoir for water, by means of which a water power may be made available in private hands for manufacturing purposes. The right to make the appropriation has been sustained, on the ground that, within the meaning of the law of eminent domain, land is taken for the public use whenever its taking is for the general public advantage, and that the establishment of power for manufacturing purposes is an object of such great public interest—especially where manufacturing is one of the great industrial pursuits of the commonwealth—as fully to justify the declaring it a public use and to authorize for the purpose the appropriation of private property by individuals or corporations.²

¹ In a few cases it has been held that private roads might be laid out by compulsory proceedings without any such constitutional permission: *Harvey v. Thomas*, 10 Watts 63; *Case of Pocopson Road*, 16 Pa. St. 15; *Sherman v. Buick*, 32 Cal. 241.

² *Hazen v. Essex Co.*, 12 Cush. 475, 477, per *Shaw*, Ch. J.; *Great Falls Manuf. Co. v. Fernald*, 47 N. H. 444,

On the other hand, the right to exercise the power of taxation in aid of the manufacturing enterprises of private persons or corporations has seldom been asserted, and whenever asserted has been most emphatically denied. It has been well and forcibly said that: "Individuals and corporations embark in manufactures for the purpose of personal and corporate gain. Their purposes and objects are precisely the same as those of the farmer, the mechanic, or the day laborer. They engage in the selected branch of manufactures for the purpose and with the hope and expectation not of loss but of profit. . . . The general benefit to the community resulting from every description of well directed labor is of the same character, whatever may be the branch of industry upon which it may be expended. All useful laborers, no matter what the field of labor, serve the state by increasing the aggregate of its products — its wealth. There is nothing of a public nature any more entitling the manufacturer to public gifts, than the sailor, the mechanic, the lumberman, or the farmer. Our government is based upon equality of rights. All honest employments are honorable. The state cannot rightfully discriminate among occupations, for a discrimination in favor of one branch of industry is a discrimination adverse to all other branches. The state is equally to protect all, giving no undue advantage or special or exclusive preference to any."¹

458, per *Perley*, Ch. J. The following cases are to the same effect: *Fiske v. Framingham Manuf. Co.*, 12 Pick. 67; *Boston & R. Mill Corp. v. Newman*, 12 Pick. 467; *Harding v. Goodlett*, 3 Yerg. 41. The courts of Wisconsin have sustained such laws: *Newcomb v. Smith*, 1 Chand. 71; *Thein v. Voegtlander*, 3 Wis. 461, 465; *Pratt v. Brown*, 3 Wis. 603. But with some hesitation of late: See *Fisher v. Horicon Co.*, 10 Wis. 351; *Curtis v. Whipple*, 24 Wis. 350; note of Judge *Redfield* to *Allen v. Inhabitants of Jay*, 12 Am. Law Reg. 493; s. c., 60 Me. 124; also 11 Am. Rep. 185. They have also been sustained in other states: *Olmstead v. Camp*, 33 Conn. 532; *Jordan v. Woodward*, 40 Me. 317; *Miller v. Troost*, 14 Minn. 365; *Venard v.*

Cross, 8 Kan. 248; *Harding v. Funk*, 8 Kan. 315; *Burgess v. Clark*, 13 Ired. 109; *M'Affee's Heirs v. Kennedy*, 1 Lit. 92; *Smith v. Connelly*, 1 T. B. Monr. 58; *Shackelford v. Coffey*, 4 J. J. Marsh. 40; *Crenshaw v. Slate River Co.*, 6 Rand. 245; *Ash v. Cummings*, 50 N. H. 591; *Hankins v. Lawrence*, 8 Blackf. 266; *Gammel v. Potter*, 6 Iowa 548. And in the federal supreme court: *Head v. Amoskeag Manuf. Co.*, 113 U. S. 9, where all the cases are collected. Compare *Tyler v. Beacher*, 44 Vt. 648; *Ryerson v. Brown*, 35 Mich. 333; *Loughbridge v. Harris*, 42 Ga. 500.

¹Opinions of Justices, 58 Me. 590, 592. This subject is considered a little further on.

Of like import is the opinion of an eminent federal judge, in a case in which a town, under an authority which the legislature had attempted to confer, had voted its bonds in aid of a private manufacture.¹ The same doctrine was afterwards affirmed in the federal supreme court. After consideration of the general nature of the power to tax, the court declare it to be "beyond cavil that there can be no lawful tax which is not laid for a *public purpose*. It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense, and what is not. It is undoubtedly the duty of the legislature which imposes or authorizes municipalities to impose a tax, to see that it is not to be used for purposes of a private interest instead of a public use; and the courts can only be justified in interposing when a violation of this principle is clear and the reason for interference cogent. And in deciding whether, in a given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to the support and for the proper use of the government, whether state or municipal. Whatever lawfully pertains to this, and is sanctioned by time and the acquiescence of the people, may well be held to belong to the public use, and proper for the maintenance of good government; though this may not be the only criterion of rightful taxation.

"But in the case before us, in which the towns are authorized to contribute aid, by way of taxation, to any class of manufactures, there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said

¹ Commercial Nat. Bank v. Iola, 2 Dill. 353. See National Bank v. Iola, 9 Kan. 689; Opinions of Justices, 58 Me. 590, 596; Parkersburg v. Brown, 106 U. S. 487; English v. People, 96 Ill. 566; Weismer v. Douglas, 64 N. Y. 91. A neck of land between two rivers could most easily be protected from cattle by a fence from river to river. A company was incorporated to build and maintain such a fence and impose fines and penalties and levy a specific tax to insure success. Held, that a land owner who refused to pay an assessment could not be compelled to do so; the undertaking not being one for which taxes could be authorized: Scuffletown Fence Co. v. McAllister, 12 Bush 312.

that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds the business men of the city or town.”¹

Further authorities in support of the position that there is a distinction in the meaning of *public use*, as employed in the law of eminent domain and of taxation, would seem unnecessary. Custom must have great influence in determining the proper limit of either power; but it is manifest that the adjudications recognize certain incidental benefits to the public as constituting such a public interest as will justify an exercise of the eminent domain which, in the case of the power of taxation, are not admitted as constituting any basis whatever for its employment. Few cases have undertaken to point out the distinction,² but the courts have acted upon it in many cases.

¹ Per Miller, J., in *Loan Assoc. v. Topeka*, 20 Wall. 655, 664. See, also, *Allen v. Jay*, 60 Me. 124. Taxation in aid of private enterprises is properly characterized by *Dickenson, J.*, in *Opinions of Justices*, 58 Me. 590-603, as taxation “to load the tables of the few with bounty that the many may partake of the crumbs that fall therefrom.” It is not competent for a city to levy taxes to loan to persons who have suffered from a fire (*Lowell v. Boston*, 111 Mass. 454); or for a town to supply farmers, whose crops have been destroyed, with provisions and seed grain (*State v. Osawkee*, 14 Kan. 418); or to pay a subscription to a private corporation, not for a public purpose (*Weismer v. Douglas*, 64 N. Y. 91); or to erect a dam with the privilege afterwards at discretion to devote it to either a public or a private purpose: *Attor-*

ney-General v. Eau Claire, 37 Wis. 400.

² See, however, *Whiting v. Sheboygan, etc. R. Co.*, 25 Wis. 167, 190, *People v. Salem T’p Board*, 20 Mich. 452, 477. In the latter case it is said that the fact that the state may exercise the power of eminent domain in behalf of an enterprise does not determine its right to exercise the power of taxation in aid of the same object. And it is added that the term “public purpose,” as employed to denote objects for which taxes may be imposed, has no relation to the urgency of the public need, or to the extent of the public benefit to follow; it is, on the other hand, a term of classification to distinguish the objects for which, according to general usage, the government is to provide, from those which, by the like usage, are to be left to private inclination, interest, or liberality.

An enumeration of the purposes which are recognized as justifying taxation is not needful, and is scarcely practicable. The most of them pass unchallenged. To preserve the public order; to provide for the enforcement of civil rights and the punishment of crime; to make compensation to public officers and to others who perform services for the public; to protect public property; to erect and keep in repair the necessary public buildings; to pay the expenses of legislation and of administering the laws,—all these are purposes which, in a consideration of the law of taxation, call for no comment, as each and all are absolutely indispensable in orderly government. All these may therefore be passed by while attention is directed to cases not so clear, the determination of which will sufficiently indicate the bounds which usage in representative government has prescribed as the proper limit to a lawful expenditure of the public moneys.

Religious instruction. This to individuals is an object of the very highest moment, and formerly it was thought to be the duty of government to provide for it. The more enlightened opinion of the present day denies the duty, and affirms that any step in that direction is in greater or less degree a species of persecution of those whose views are not favored, and therefore incompetent in any country whose political institutions are based upon the principles of equality before the law.¹ Religious instruction is, therefore, by common consent,

¹ Cooley, *Const. Lim.*, ch. 13, and cases referred to in the notes. Dr. Wayland justly observes that "The only ground on which taxes for the support of religion can be defended is that its existence is necessary for the support of civil government, and that it can be sustained in no other manner than by compulsion. The first assertion we grant to be true; the second we utterly deny. Hence we do not believe that any taxation for this purpose is necessary. All that religious societies have a right to ask of the civil government is, the same privileges for transacting their own affairs which societies of every other sort possess. This they

have a right to demand, not because they are religious societies, but because the exercise of religion is an innocent mode of pursuing happiness. If these be not granted, religious men are oppressed, and the country where such oppression prevails, let it call itself what it may, is not free." Wayland, *Pol. Econ.*, b. 4, ch. 3, § 2. It has been held not incompetent to permit a public school-house to be made use of for religious purposes when it is not wanted for school: *Nichols v. School Directors*, 93 Ill. 61; *Davis v. Boget*, 50 Iowa 11. Compare *Dorton v. Hearn*, 67 Mo. 301; *People v. McAdams*, 82 Ill. 356.

referred exclusively to the voluntary action of the people. It is expressly forbidden by many of the state constitutions that public moneys shall be appropriated to religious worship. It is true that in selecting the objects of taxation, buildings and other property made use of for that purpose are generally exempted from the lists. This is done without discrimination between sects, and is generally defended upon the ground that public worship is a public benefit which may properly be encouraged in this indirect way. The discrimination is opposed by some persons, but whether or not it is proper or politic, it cannot be declared unwarranted by the general principles of government. As already observed, the question what taxes shall be levied, and upon what classes of persons or property, is always one of public policy which the legislature must solve. But another view is not entirely without plausibility. Whoever contributes to the support of churches also contributes to pay the taxes, if any, which are imposed upon them. But as most persons who pay taxes at all do, in some form, and with some regard to their ability, contribute to the support of churches, it is of little importance to the general public whether taxes are levied on church property or not, as whatever is collected from such property, while it goes to diminish what will be collected from individual property, will at the same time increase to the same extent what the individuals pay for the support of religious instruction, so that the burden in the one case will be substantially the same as in the other. We do not say that this view is strictly correct, but it is perhaps safe to say that the inequality occasioned by the exemption of church property from taxation is not so great as without reflection one would be likely to suppose.

Secular instruction.¹ It may be safely declared that to bring a sound education within reach of all the inhabitants has been a prime object of American government from the

¹ The taxation of property for the support of free public schools, in accordance with the constitution and laws of a state, is not a taking of property without due process of law: *Werner v. Galveston*, 72 Tex. 92. See *Revell v. Annapolis*, 81 Md. 1. Legislation held void as contrary to a constitutional provision for the county school fund: *Greensboro v. Hodgkin*, 106 N. C. 482. A statute authorizing the board of trustees of incorporated towns to levy and collect annual taxes for the support of town schools

very first. It was declared by colonial legislation, and has been reiterated in constitutional provisions to the present day. It has been regarded as an imperative duty of the government; and when question has been made concerning it, the question has related not to the existence of the duty, but to its extent. But the question of extent is one of public policy, and addresses itself to the legislature and the people, not to the courts.¹ And

within their corporation, not exceeding a certain rate on the valuation, is not repugnant to a constitutional provision directing the general assembly to provide a "general and uniform system of common schools," etc.: *Shepardson v. Gillett*, 133 Ind. 125. For the most part public education in the United States is in charge of corporations created for the purpose, the most of which are invested with power of taxation. But this power is limited strictly to the educational purpose: *People v. Trustees of Schools*, 78 Ill. 136, and cases referred to. Also *Weightman v. Clark*, 103 U. S. 256. The incorporated trustees of an academy held to be a public corporation capable of exercising the taxing power conferred upon them: *State v. Vaughan*, 99 Mo. 332. The fact that a state constitution expressly mentions only a state university and common schools as educational institutions to be provided for does not preclude the establishment and support of state normal schools: *Briggs v. Johnson County*, 4 Dill. 148. A statute imposing a tax each year for the benefit of a college incorporated by law and under state control does not violate a constitutional provision that the fund known as the "common school fund," together with any sum raised in the state by taxation, or otherwise, for purposes of education, shall be held inviolate for the purpose of sustaining common schools, and that such funds may be appropriated in aid of common

schools but for no other purpose: *Higgins v. Prater*, 91 Ky. 6. Taxation in support of a high school, when duly authorized, will not be held incompetent by reason of the course of study prescribed being different from that contemplated by law: *Richards v. Raymond*, 92 Ill. 612. See *Stuart v. Kalamazoo*, 30 Mich. 69.

¹*Commonwealth v. Hartman*, 17 Pa. St. 118; *Powell v. Board of Education*, 97 Ill. 375; *Bellmeyer v. School District*, 44 Iowa 564. See the very interesting case of *Cushing v. Inhabitants of Newburyport*, 10 Met. 508. Also *Bull v. Read*, 13 Grat. 78; *Stuart v. Kalamazoo*, 30 Mich. 69. That a tax for the support of free schools is within a general grant of the power to tax for "municipal purposes," see *Horton v. School Com'rs*, 43 Ala. 598; *Opinions of Justices*, 67 Me. 582. "That the education of children, the support of public or common schools — schools not confined to any class but open to all — is a public use supporting taxation, state or local, cannot be doubted:" *Southern R. Co. v. St. Clair County*, 124 Ala. 491. In the same case it is said that corporations or non-residents have a direct interest in the better maintenance of the public schools, and should be taxed for their support, since they have property to protect and greater security from the moral, intellectual, and social improvement of the community by which the property is surrounded. See *Amesbury N. F. Co. v. Weed*, 17 Mass. 52. Under the Missouri laws taxes for building school-

the tendency on the part of the people has been steadily in the direction of taking upon themselves larger burdens in order to provide more spacious, elegant, and convenient houses of instruction, and to place within the reach of all a more generous and useful education. And this is usually done by the direct action of the public; the state or its municipalities constructing and owning the edifices, and supporting the schools, academies, colleges, and universities.¹

houses cannot be levied on railroad property: *State v. Wabash, St. L. etc. R. Co.*, 90 Mo. 166. Dr. Wayland, in speaking of the liberality of construction in determining the purposes of taxation, says: "It must not, of course, always be expected that the product created by consumption (in public expenditure) will be a visible, tangible, material substance. Thus we see no physical, tangible product as the result of taxes for the support of civil government. But we receive the benefit in security of person, property, and reputation; or in that condition of society which, though it be incapable of being weighed and measured, is absolutely essential both in individual happiness and individual accumulation. The same may be said in substance concerning the taxes paid for general education. Here whether the taxpayer receives his remuneration in instruction given to his own children or not, he yet receives it in the improvement of the intellectual and social character of his neighbors, by which his property is rendered more secure, the labor for which he pays is better performed, and the demand for whatever he produces is more universal and more constant. The same may be said of the public expenditure by which the moral and social character of a community is elevated, the taste of a nation refined, and an impulse given to efforts for the benefit of man. With this view, no one could oppose the expense incurred in bestowing

upon public edifices elegance, or even, in some cases, magnificence of structure, in the public celebration of remarkable eras, and in the rewards bestowed upon those who have by their discoveries enlarged the boundaries of human knowledge, or by their inventions signally improved the useful arts:" *Pol. Econ.*, pt. 4, ch. 3, § 1.

¹ When public funds are provided for education under definite regulations or restrictions, these must be observed: *People v. Board of Education*, 13 Barb. 400; *People v. Allen*, 42 N. Y. 404; *Halbert v. Sparks*, 9 Bush 259; *Collins v. Henderson*, 11 Bush 74; *State v. Graham*, 25 La. An. 440; *State v. Board of Liquidation*, 29 La. An. 77; *Sun Mut. Ins. Co. v. Board of Liquidation*, 31 La. An. 175; *Littleworth v. Davis*, 50 Miss. 403; *Weir v. Day*, 35 Ohio St. 143; *Otken v. Lamkin*, 56 Miss. 758; *Greensboro v. Hodgkin*, 106 N. C. 182. As to power of the state to control school expenditures, see *Curryer v. Merrill*, 25 Minn. 1; *Bancroft v. Thayer*, 5 Sawy. 502; *People v. Board of Education*, 55 Cal. 331; *Kinney v. Zimpleman*, 36 Tex. 554. Taxation for free schools for counties and municipalities is taxation for county and corporate purposes within the meaning of a constitutional provision that gives the legislature power to authorize counties and municipalities to tax for such purposes: *Ballentine v. Palaski*, 15 Lea 633. A bill to compel the selectmen to assess a tax on a school

But to justify taxation for the purpose of education, the rules under which the people shall be admitted to the privileges given must not be invidious and partial, but must place all parties on a plane of practical equality. The rule is substantially the same here that applies in the apportionment of taxes: equality must be the aim of the law, and it must be assumed the state has no special favors to bestow upon privileged classes. But if the rules are impartial it is not a legal objection to them that they fail to provide for every one. Elementary instruction, for example, is commonly offered by the state to children between certain ages only; and if the offer is impartial to these, no just exception can be taken to it. Neither can one complain that he is required to attend the schools in his own neighborhood. But it would not be competent to single out some one class of the community and exclude them from the benefits of the public schools on arbitrary grounds. This has been frequently held in the case of the freedmen and other colored citizens.¹

In some states a practice has prevailed, while making liberal provision for instruction in public schools, also to give assistance to institutions owned and controlled by private corporations or by religious bodies or denominations. The legal right to do this has received but little attention. In one case in

district to build a school-house on a lot that is not public property cannot be maintained: *Loverin v. School Dist.*, 64 N. H. 616.

¹ Whether it is the constitutional right of colored children to attend the same schools with others when the law makes equal provision for them elsewhere is a question discussed in the following cases: *State v. Duffy*, 7 Nev. 342; *Cory v. Carter*, 48 Ind. 327; *Ward v. Flood*, 48 Cal. 36; *State v. McCann*, 21 Ohio St. 198; *Bertonneau v. School Directors*, 3 Woods 177. In several of the states it is expressly prohibited by law that any distinction shall be made. Where the law contemplates separate schools, colored children may nevertheless attend the regular schools if no others are provided for them: *State v.*

Duffy, 7 Nev. 342. In Kentucky the law provides for devoting school taxes collected from colored people to the support of schools for colored children. They cannot, therefore, be taxed for exclusively white schools. See *Marshall v. Donovan*, 10 Bush 681; *Claybroke v. Owensboro*, 16 Fed. Rep. 297. A statute requiring a tax on polls and property of colored persons to be applied exclusively to the education of their children was held to be an unlawful discrimination within the prohibition of the state constitution relating to taxes, and an unlawful "discrimination in favor of or to the prejudice of either race:" *Puitt v. Gaston County Com'rs*, 94 N. C. 709; *Rigsbee v. Durham*, 94 N. C. 800.

Massachusetts, under a constitutional provision which required moneys raised for public schools to be applied to those only which were under the order and superintendence of the public authorities, it was denied that the legislature could lawfully authorize a town to take moneys which had been raised for the public schools and appropriate them in support of a school founded by a charitable bequest, under which the order and superintendence of the school was vested in trustees who, though a majority were to be chosen by the inhabitants of the town, were yet limited to the members of certain religious societies.¹ And in Wisconsin the authority of the legislature to empower a town to tax its citizens in aid of the erection of buildings for an educational institution to be owned and controlled by a private corporation was denied on general principles. "It strikes us," say the court, "at the first blush, that this is not the levy and collection of money for public purposes, as clearly as if the institute were not an incorporated body, but a mere association of private individuals resolved upon the establishment of a like institution. If it were such an institution, or a grammar or classical school, or a seminary built up and established by individual enterprise, as by persons engaged in the profession of teaching, or by others, and owned and controlled by those contributing towards it, and the emoluments belonging to them, we apprehend that no one would contend that the people [of the town] might be taxed for the purpose of donating the moneys to it. The fact that it is an institution incorporated by act of the legislature does not change its character in this respect. It is but a most frivolous pretext for giving to a corporation, where there is no certain and definite personal responsibility, money exacted from the taxpayers, which a just and honorable man engaged in the same business would hesitate to receive though paid without opposition, and to enforce the payment of which, against the will of the taxpayers, he would never think of resorting to coercive measures, provided the same were lawful. It can no more be supported by taxation than if it were unincorporated, or a private school or seminary of the kind above supposed."²

¹ *Jenkins v. Andover*, 103 Mass. 94. *T. & S. F. R. Co. v. Atchison*, 47 Kan. 612; *Hanson v. Vernon*, 27 Iowa 28; See *People v. McAdams*, 82 Ill. 356.

² *Curtis v. Whipple*, 24 Wis. 350, *Higgins v. Prater*, 81 Ky. 6. 353, per *Dixon*, Ch. J. See *Atchison*,

This is strong language, and has much reason in its support, though it may be affirmed that it has had little or no influence on the course of legislation in other states.

It has been decided to be competent for the legislature to authorize a town to tax itself in aid of the erection of buildings for a state educational institution to be constructed within it.¹ In the particular case the purpose, as regards the state at large, was clearly public, but the locality was allowed to assume a special burden on the ground of special and peculiar benefits. A case in New York perhaps goes further, inasmuch as it sustains the authority of the legislature to require a village to render such assistance.² While it may be entirely proper to regard the incidental benefits to the locality as constituting a just basis for an exceptional tax upon it, no such ruling would be admissible where the building itself was not to be one owned and controlled by the public, and where consequently the sole ground for any taxation would be the incidental benefits to flow from a private undertaking. This has been so clearly shown in a case from which we have already quoted, that we copy from the opinion instead of attempting any statement of the general doctrine in our own language:

"That is not the kind of public benefit and interest which will authorize a resort to the power of taxation. Such benefits accrue to the people of all communities from the exercise in their midst of any useful trade or employment, and the argument, pursued to its logical result, would prove that compulsory payment or taxation might be made use of for the purpose of building up and sustaining every such trade or employment, though carried on by private persons for private ends, or the purposes of mere individual gain and emolument. That there exists in the state no power to tax for such purposes is a proposition too plain to admit of a controversy. Such a power would be obviously incompatible with the genius and institutions of a free people; and the practice of all liberal governments, as well as all judicial authority, is against it. If we

¹ *Merrick v. Amherst*, 12 Allen 500. See also *Marks v. Trustees of Purdue Univ.*, 37 Ind. 155; *Burr v. Carbon-dale*, 76 Ill. 455; *Hensley Tp v. People*, 84 Ill. 544; *Livingston County v. Darlington*, 101 U. S. 407.

² *Gordon v. Cornes*, 47 N. Y. 608. In that case, however, there was to be a grammar school in the state building, free to the children of the village. Compare *Staté v. Haben*, 22 Wis. 661.

turn to the cases where taxation has been sustained as in pursuance of the power, we shall find in every one of them that there was some direct advantage accruing to the public from the outlay, either by its being the owner or part owner of the property or thing to be created or obtained with the money, or the party immediately interested in or benefited by the works to be performed, the same being matters of public concern; or because the proceeds of the tax were to be expended in defraying the legitimate expenses of government, and in promoting the peace, good order, and welfare of society. Any direct public benefit or interest of this nature, no matter how slight, as distinguished from those public benefits or interests incidentally arising from the employment or business of private individuals or corporations, will undoubtedly sustain a tax. In thus endeavoring to define how the public must be beneficially interested in order to justify the raising of money by taxation in cases like the present, we of course do not intend to include all purposes for which money may be so raised. Taxes may be levied and collected for charitable purposes, but these constitute a peculiar ground for the exercise of the power which does not exist here.

“So claims founded in equity and justice in the largest sense, and in gratitude, will support a tax; such claims, however, and we think all others where taxation is proper, except claims founded in charity, may be referred to the general principle above spoken of, of public interest in, or benefits received by, the transaction out of which the claims arose.”¹

Public charity. The support of paupers and the giving of assistance to those who, by reason of age, infirmity, or disability, are likely to become such, is, by the practice and common consent of civilized countries, a public purpose.² The laws not

¹Curtis v. Whipple, 24 Wis. 350, 354, per Dixon, C. J. Statutes imposing taxes for the benefit of the state university free-scholarship fund were held void, such taxation being for a purely private purpose: State v. Switzler, 143 Mo. 287; Simmons Medicine Co. v. Ziegenhein, 145 Mo. 368.

²See opinion of Brewer, J., in State v. Osawkee T'p, 14 Kan. 424. Also

opinion of Wallin, J., in State v. Nelson County, 1 N. D. 88. The former case holds that a loan of aid to an impoverished class, not yet in the poor-house, is necessarily a tax for a private purpose. In the latter case a statute authorizing counties to issue bonds to procure seed-grain for needy farmers is upheld on the ground that unless succored in some such way

only exempt from taxation the limited means of such persons, but they go further and provide public funds with which to furnish them retreats where they can be supplied with the necessities and, to a reasonable extent, with the comforts of life. Hospitals are also provided where dependent classes can receive medical aid and assistance, and asylums where the deaf, the dumb, and the blind may be supported and taught, and where the insane may be kept from doing or receiving harm, and can have such careful and scientific treatment, with a view to their restoration, as they would not be likely to receive elsewhere. He would be a bold man who, in these days, should question the public right to make provision for these benevolent objects. And this provision might not only be made by the establishment of institutions for the purpose, but private institutions might undoubtedly be aided with public funds, in consideration of services to be rendered to the public, and expenses to be incurred by them in assisting and relieving the same necessitous and dependent classes.¹

thousands of persons would become paupers. On the other hand the "seed-grain loan" statute of Minnesota was held void on the ground that its benefits were not confined to those who were a public charge or in immediate danger of becoming such: *William Deering & Co. v. Peterson*, 75 Minn. 118.

¹ *Henry v. Cohen*, 66 Ala. 382, 386. It has been held not competent to levy taxes to be paid over to individuals or associations simply because they are charitable. In the particular case the legislature had required the agencies of foreign insurance companies to pay over two per centum of their receipts to an association for the relief of disabled firemen. "If the legislature may command such a contribution as this, we are unable to see why they may not command every citizen to contribute, not only to this association but to every charitable association; and, indeed, to every man who spends his money and means in a charitable

way. There are associations for all sorts of charity — why may not the legislature require us to contribute to them all, if they may require this class of people to contribute to this one? We cannot answer this question:" *Lowrie, Ch. J.*, in *Philadelphia Assoc. etc. v. Wood*, 39 Pa. St. 73, 82. But in New York it is decided that a constitutional provision that "neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation, or private undertaking," etc., would not preclude taxation by municipalities in aid of charitable societies and corporations: *Shepherd's Fold v. New York*, 96 N. Y. 137. But they cannot thus tax without being empowered by legislation, either expressly or by necessary implication: *St. Mary's Industrial School v. Brown*, 45 Md. 310. The taxing power of the state may be used in repayment of the expense of care and maintenance of children committed to an incorporated industrial school: *Wiscon-*

Private business enterprises. In comparing the right to tax with the right of eminent domain it has been shown that taxation cannot be employed to aid mills and other manufactories in private hands. The rule there stated is general. However important it may be to the community that individual citizens should prosper in their industrial enterprises, it is not the business of government to aid them with its means. Enlightened states, while giving all necessary protection to their citizens, will leave every man to depend for his success and prosperity in business on his own exertions, in the belief that by doing so his own industry will be more certainly enlisted, and his prosperity and happiness more probably secured. It may therefore be safely asserted that taxation for the purpose of raising money from the public to be given or even loaned to private persons, in order that they may use it in their individual business enterprises, is not recognized as an employment of the power for a public use. In contemplation of law it would be taking the common property of the whole community and handing it over to private parties for their private gain, and consequently unlawful. Any incidental benefits to the public that might flow from it could not support it as legitimate taxation.¹ Thus taxes cannot be imposed

sin *Industrial School v. Clark County*, 103 Wis. 651. And the question of constitutional power must be one of construction, which might depend largely on the peculiar state experience: *Bay City v. Treasurer*, 23 Mich. 499.

¹ *Allen v. Jay*, 60 Me. 124; *Weismer v. Douglas*, 64 N. Y. 91. See a valuable note to the former case by Judge *Redfield*, 12 Am. Law Reg., N. S., 493. Where, in consideration of D.'s agreement to erect within its limits a stove-mill giving employment to seventy persons, a village agreed to expend \$1,200 in making certain public improvements around the ground to be occupied by the mill, the money to be deposited in the bank subject to D.'s check, this was held to be an appropriation for private purposes which would not

warrant a tax: *Clee v. Sanders*, 74 Mich. 692. It is not competent to levy a tax for the support of a woolen mill in private hands, and if the tax is laid and the money collected the officers have no right to pay it over: *McConnell v. Ham*, 16 Kan. 228. A statute providing that certain bounties shall be paid to manufacturers in the state of sugar from beets grown in the state is unconstitutional as authorizing taxation for a private purpose: *Michigan Sugar Beet Co. v. Auditor-General*, 124 Mich. 625. See, on the general subject, *Commercial Nat. Bank v. Iola*, 2 Dill. 353; *Loan Assoc. v. Topeka*, 20 Wall. 655; *National Bank v. Iola*, 9 Kan. 689; *Bissell v. Kankakee*, 64 Ill. 249; *English v. People*, 96 Ill. 566; *Cushing v. Newburyport*, 10 Met. 510; *State v. Foley*, 30 Minn.

to aid in rebuilding an extensive burnt district;¹ or to defray the cost of the treatment, in private institutions, of persons, not paupers, who are addicted to the use of intoxicants;² or for the purpose of raising a fund, even in part, the income of which is to be devoted to keeping a private cemetery in repair, and to decorating the graves of certain individuals.³ Towns cannot raise money for the purpose of abating a particular class of taxes — *e. g.*, poll taxes upon male inhabitants — and consequently cannot appropriate public moneys for that purpose.⁴ It has been held in Kansas that where part of the proceeds of a tax upon insurance contracts is to be used for the benefit of a volunteer fire department of the municipality, such tax is for a private purpose, and void.⁵ If taxation in aid of

350; *Cook v. Sumner Manuf. Co.*, 1 Sneed 698; *Scuffletown Fence Co. v. McAllister*, 12 Bush 312. A statute authorizing a village to issue bonds to aid in the construction of a dam for the purpose of improving a private water-power is invalid as providing for public taxation for a private purpose: *Coates v. Campbell*, 37 Minn. 498. And a statute authorizing tolls for floating logs on certain streams was held invalid as the tolls authorized were for private benefit and not for public good, and conferred no corresponding benefit on the owner of the logs: *Hutton v. Webb*, 126 N. C. 897. Taxation in support of a grist mill has been held void, and the payment of bonds issued for the purpose was enjoined: *Central Branch U. P. R. Co. v. Smith*, 23 Kan. 745. On the other hand, taxation in aid of a public grist mill, the tolls of which the legislature would have a right to regulate, was sustained in *Burlington v. Beasley*, 94 U. S. 310. It is of course conceivable that in a new country such a mill may not only be a public necessity, but impossible of establishment without public aid. In *MacKenzie v. Wooley*, 39 La. An. 944, a special tax voted in behalf of a corporation organized to build a railway and to

erect a cotton compress was sustained to the extent that the proceeds thereof were to be used for building the railway; that being a public improvement, while the erection of the compress was a mere private enterprise.

¹ *Lowell v. Boston*, 111 Mass. 454; *Feldman v. Charleston*, 23 S. C. 57. In the case of *William Deering Co. v. Peterson*, 75 Minn. 118, it was held that a statute appropriating money for "seed-grain loans" to farmers whose crops had been destroyed by hail or storms was invalid.

² *Wisconsin Keeley Inst. Co. v. Milwaukee County*, 95 Wis. 153. This case is distinguished in *Wisconsin Industrial School v. Clark County*, 103 Wis. 651, where it is held that, although the taxing power of the state cannot be used to furnish a gratuity to a corporation, it may be used to compensate such corporation for a public service, such as the care and maintenance of girls committed to an incorporated industrial school.

³ *Luques v. Dresden*, 77 Me. 186.

⁴ *Cooley v. Granville*, 10 Cush. 56. See *Hooper v. Emery*, 14 Me. 375, 379.

⁵ In *re Page*, 60 Kan. 842. It is held in Nebraska that cities have power, under proper statute, to impose an occupation tax upon fire insurance

private enterprises by which the public might incidentally be benefited is illegal, much more is the exertion of the taxing power to furnish mere gratuities to individuals prohibited.¹ And the fact that a majority of the taxpayers request the levy of a tax that is for a private purpose does not validate the charge. Majorities have not power to impose taxes upon the minority for the purpose of raising money to be devoted to gifts or gratuities to individuals.²

It has been held that a statute authorizing the payment by county boards to agricultural societies of a sum equal to three cents for each inhabitant is for a public purpose.³

Moral obligations. There are some cases in which taxation has been allowed for the benefit of private persons on considerations not of charity so much as of justice. Any exercise of the powers of government is liable to cause injury to particular individuals. When the injury is merely incidental, these individuals have no legal claim to indemnification. Nevertheless,

companies doing business in the city, and to apply the proceeds to the maintenance of voluntary fire departments: *German-American F. Ins. Co. v. Minden*, 51 Neb. 870.

¹ A tax imposed by a town to pay for voluntary services is invalid, and the selectmen may be restrained from imposing it: *Osgood v. Conway*, 67 N. H. 100. Where a board of education is under no obligation to pay a claim asserted against it by a private individual, an act procured by the claimant commanding the board to levy a tax for its payment is unconstitutional: *Board of Education v. State*, 51 Ohio St. 531. A statute consolidating school districts, and providing for the remission to the taxpayers of each district, out of a fund created by taxation, of the appraised value of the school property in each district, was held void as imposing a tax for a private purpose, levied for benefit of a selected class of persons to reimburse them for moneys previously paid in satisfaction of taxes legally set upon them and appropri-

ated to public uses: *Elizabethtown Water Co. v. Wade*, 59 N. J. L. 78. See, to the same effect, *In re Council of Cranston*, 18 R. I. 417. A statute amending the collateral inheritance tax-law by exempting from such tax certain persons and classes, and providing that such exemptions "shall apply to all property which has passed by will, succession, or transfer since the approval of the act of which such statute is amendatory, except in cases where the tax has been paid," violates the constitutional provision that the legislature shall make, or authorize the making of, any gift of any public money or thing of value to any person or corporation: *In re Stanford's Estate*, 126 Cal. 112. In *Deal v. Mississippi*, 107 Mo. 464, a statute was held void because giving bounty to private individuals for growing forest trees upon their own land.

² *Bush v. Board of Supervisors*, 159 N. Y. 212.

³ *State v. Robinson*, 35 Neb. 401.

it seems eminently proper and just, in some exceptional cases, to recognize a moral obligation resting on the public to share with the persons injured the damage sustained; and this can only be done by means of taxation. All governments are accustomed to recognize and pay equitable claims of this nature under some circumstances; claims, for instance, for the destruction of private property in war, and sometimes for incidental injuries occasioned by the construction of a public work, or for loss in performing a contract to construct it.¹

In these cases the legislature is not confined in making compensation within the strict limits of common-law remedies, but it may recognize moral or equitable obligations, such as a just man would be likely to recognize in his own affairs, whether by law required to do so or not. And what the legislature may do for the state, the municipalities, under proper legislation, may do for themselves. Thus where their officers have been subjected to responsibility and loss in an honest attempt to perform public duty, they may very justly as well as legally be indemnified by the municipality for which they were acting.² And it has several times been held that what the municipality might thus voluntarily do, the legislature might require it to do.³ It may, therefore, compel a city to issue bonds for a merely equitable demand,⁴ or to lay a tax for its satisfaction.⁵

¹ *New Orleans v. Clark*, 95 U. S. 644; *Lycoming v. Union*, 15 Pa. St. 166; *Friend v. Gilbert*, 108 Mass. 408; *Guilford v. Supervisors of Chenango*, 13 N. Y. 143.

² *Nelson v. Milford*, 7 Pick. 18, 23; *Hadsell v. Hancock*, 3 Gray 526; *Fuller v. Groton*, 11 Gray 340; *Baker v. Windham*, 13 Me. 74; *Pike v. Middleton*, 12 N. H. 278; *Briggs v. Whipple*, 6 Vt. 95; *Sherman v. Carr*, 8 R. L. 431; *Bancroft v. Lynnfield*, 18 Pick. 566, 568. Whether this could be done in Michigan, see *Bristol v. Johnson*, 34 Mich. 123. Where a school building has been lawfully condemned, and has been repaired out of the private funds of the school trustees, property owners cannot avoid a tax afterwards lawfully imposed to pay

for such repairs: *Louisville & N. R. Co. v. Trustees (Ky.)*, 29 S. W. Rep. 340. A town in Maine cannot assess a tax to reimburse a tax collector who has taken a note for certain moneys and accounted therefor to the town as money, but who is thereafter unable to collect the note: *Thorndike v. Inhabitants of Camden*, 82 Me. 39.

³ *Guilford v. Supervisors of Chenango*, 13 N. Y. 143; *Brewster v. Syracuse*, 19 N. Y. 116; *New Orleans v. Clark*, 95 U. S. 644; *Board of Education v. McLandsborough*, 36 Ohio St. 227; *Wilkinson v. Cheatham*, 43 Ga. 258; *Beals v. Amador*, 35 Cal. 624; *Blanding v. Burr*, 13 Cal. 343.

⁴ *Blanding v. Burr*, 13 Cal. 343.

⁵ See *Thomas v. Leland*, 24 Wend.

Amusements and celebrations. To furnish amusements to its citizens is not one of the functions of government. But to provide public parks or other grounds which shall be open to the public use and occupation for healthful recreation and enjoyment, is not only proper but highly commendable, and in large towns may almost be said to be absolutely necessary.¹ The great public parks of the world are public blessings, in which the poor participate with the rich, and from which they, perhaps, derive the larger share of positive benefit. How far a state or a town should go in making these attractive, the legislative wisdom must provide, and it will be likely to err but seldom in the direction of liberality so long as careful provision is made for an honest expenditure of public funds.

Governments sometimes provide for the celebration of important events or eras, and for making exhibits at public fairs.² It is generally held that cities and towns have not authority to do this, at least without express legislative provision.³

65; *New Orleans v. Clark*, 95 U. S. 644.

¹ See *Matter of Central Park*, 50 N. Y. 493; *Matter of Prospect Park*, 60 N. Y. 398; *State v. Leffingwell*, 54 Mo. 458; *People v. Salomon*, 51 Ill. 37; *People v. Brislin*, 80 Ill. 423; *Dunham v. People*, 96 Ill. 331; *Attorney-General v. Burrell*, 31 Mich. 25.

² An appropriation to enable the state to participate in the World's Fair at Chicago is a valid exercise of legislative power, under a constitution providing that "taxes shall be levied and collected for public purposes only:" *Norman v. Board*, 93 Ky. 537. To the same effect, *Daggett v. Colgan*, 92 Cal. 53. A statute authorizing counties to participate in interstate expositions, to issue bonds for such purpose, and to levy taxes for their payment, is for a public purpose and valid: *State v. Cornell*, 53 Neb. 556.

³ A town has not power to appropriate money to be used in celebrating the fourth of July: *Hood v. Lynn*, 1 Allen 103; *Gerry v. Stone-*

ham, 1 Allen 319; *New London v. Brainard*, 22 Conn. 552; *Hodges v. Buffalo*, 2 Denio 110. Or the anniversary of the surrender of Yorktown: *Tash v. Adams*, 10 Cush. 252. Nor can a municipality raise money to furnish entertainment for its guests: *Law v. People*, 87 Ill. 385; *Hodges v. Buffalo*, 2 Denio 110. A county tax to pay the expense of placing stones from the county building in the state building at the World's Fair is unauthorized and void: *Hayes v. Douglas County*, 92 Wis. 429. An appropriation by a city council to defray the expenses of a committee to represent the city at a convention of American municipalities is not for a public purpose; nor is it for a necessary charge arising in such city: *Waters v. Bonvouloir*, 172 Mass. 286. An appropriation by a town made in pursuance of a statute to celebrate the centennial anniversary of its incorporation has been upheld: *Hill v. Easthampton*, 140 Mass. 381. An appropriation of money by a city for the celebration of holidays has been

The public health. It is not doubted that the preservation of the public health is a public purpose of prime importance.¹ Sanitary regulations are indispensable in large towns, but they may be made for every locality. The right to provide for draining low lands for the purpose is well settled,² and the right to protect low lands from overflow may also be justified on the same reasons.³

Irrigation. The providing of arid lands with water is governed by principles not different from those applicable to the reclamation of swamps. "Water used for irrigation purposes upon lands which are naturally arid is used for a public purpose, and the tax to pay for it is collected for a public use, and the assessment upon lands benefited is also levied for a public purpose."⁴

held to be for a public purpose: *Hubbard v. Taunton*, 140 Mass. 467.

¹ *Davock v. Moore*, 105 Mich. 120. Taxes may be levied for the care of small-pox patients, and to prevent the spread of the disease: *Solomon v. Tarver*, 52 Ga. 405.

² *Woodruff v. Fisher*, 17 Barb. 224; *Hartwell v. Armstrong*, 19 Barb. 166; *Anderson v. Kerns Draining Co.*, 14 Ind. 199, 202; *Draining Company Case*, 11 La. An. 338; *Sessions v. Crunkilton*, 20 Ohio N. S. 347, 149; *Duke v. O'Bryan*, 100 Ky. 710. The authority of the legislature to enact drainage laws is derived from the police power, the right of eminent domain, or the taxing power, and is undoubted. It is founded in the right of the state to protect the public health and provide for the public convenience and welfare. There is not full harmony as to the grounds on which the laws are sustained: *Lien v. Board of Com'rs*, 80 Minn. 58. But the power of taxation cannot be exercised to provide drains for purposes merely private: *In re Tuthill*, 163 N. Y. 133. A proceeding under the drainage law cannot be regarded as for private benefit where the ap-

plication states that the proposed drain is necessary for public and private health, convenience, and welfare, and where the public welfare is kept prominently in view throughout the case: *Duke v. O'Bryan*, 100 Ky. 710.

³ A statute for the purpose of establishing a system of dykes is not invalid as permitting private property to be taken for other than public use: *Hansen v. Hammer*, 15 Wash. 315.

⁴ *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112. See, to the same effect, *Paxton, etc. Co. v. Farmers', etc. Co.*, 45 Neb. 884; *Clark v. Irrigation Co.*, 45 Neb. 798; *Board of Com'rs v. Collins*, 46 Neb. 411. Taxation for a work of internal improvement such as constructing a ditch for the purpose of irrigating arid lands is for a public use: *Cummings v. Hyatt*, 54 Neb. 35. The statute providing for the organization and government of irrigation districts contemplates taxation for a public purpose: *Turlock Irrig. Dist. v. Williams*, 76 Cal. 360. To render the use of water for the irrigation of arid lands a public use, every resident of the irrigation dis-

Highways and roads. One of the most important functions of government is the making provision for public roads for the use of the people. The variety of these is great, and the modes of construction and operation are different. No question is made of the competency of the legislature to levy taxes for the common highway, the improved turnpike and macadamized road, the planked or paved street, the canal, the tramway, or the railway. Any or all of them may be constructed by the state, or, under state authority, by the municipal subdivisions of the state within whose limits they may be needed.¹ They may be supported and kept in repair by taxation of the state or of proper districts, or private corporations may be in-

strict need not have the right to use the water. If each land-owner has the right to use a proportionate share upon the same terms as all the others, the use is a public and not a private one: *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112.

¹ *County Com'rs v. Jacksonville*, 36 Fla. 196. In *Philadelphia v. Field*, 58 Pa. St. 320, it was held competent for the legislature to provide for the construction of a free bridge over the Schuylkill, opposite one of the streets of Philadelphia, and to require the expense to be borne by taxation of the city. The cases of *Thomas v. Leland*, 24 Wend. 65; *Norwich v. County Com'rs*, 13 Pick. 60; *Hingham, etc. Corporation v. Norfolk County*, 6 Allen 353, and *Board of Wardens v. Philadelphia*, 42 Pa. St. 209, were cited with approval. Some of these will be referred to hereafter. The levy of a tax by the county commissioners to purchase a toll road, and make it free, is a proper public purpose: *Warden v. Commissioners*, 38 Ohio St. 639. It is a tax and not an assessment when the cost of building a bridge is laid upon the property of a city and of a town connected by the bridge: *People v. Whyler*, 41 Cal. 351; *Smith v. Farrelly*, 52 Cal. 77. It has been held that where a city, under competent legislation,

improves its own streets, a county tax for roads cannot be laid upon its inhabitants: *Martin v. Aston*, 60 Cal. 63. But it is doubted that this is universally true. For a somewhat peculiar case involving the construction of a statute for taxing to make a county road, see *King v. Aroostook Co.*, 63 Me. 567. The state may, by general law or otherwise, require a county to share with a town in the cost of an expensive bridge or road, though in general the towns bear the whole cost of such works: *Super-visors of Will Co. v. People*, 110 Ill. 511. It is not a diversion of county revenues to other than county purposes where a statute directs half of the special road tax levied by county commissioners and realized from taxable property in cities and towns to be turned over to municipal authorities to be used in repairing streets, etc., in such cities and towns: *County Com'rs v. Jacksonville*, 36 Fla. 196. A statute providing that in all cities of a certain population all the road and bridge tax levied within the limits of the city shall be paid over to the city treasurer "for city purposes" requires the tax to be paid over for road and bridge purposes only: *Peoria & P. U. R. Co. v. People*, 144 Ill. 458.

vested with the franchise of constructing them, and taking tolls for their use. Upon these points, also, no question arises. The differences of opinion which are met with, regarding taxation for public conveniences of this nature, have principally arisen in those cases in which the legislature has permitted or required the municipal corporations or subdivisions of the state to become stockholders in private corporations organized for the purpose of constructing them, or to make loans or donations to such corporations in order to assist them in their enterprises. On the one hand, it has been insisted that the state cannot subject itself and its property, as a corporator, to the risks of a business conducted and managed in part, perhaps mainly, by individuals for their own benefit; and that if it can do so in one business, because of benefits that may flow to the public in consequence of their being supplied with convenient facilities for travel and transportation, there is no reason in the nature of things why it may not do so in any other case where benefits to the public might reasonably be anticipated in consequence of their being furnished any other valuable conveniences or facilities. The public, it has also been claimed, could not be taxed in aid of such private corporations, because the benefits anticipated from them would be purely incidental, not differing in their nature from those which might flow from the establishment of a mill for the manufacture of breadstuffs, or from any other manufactory of a useful kind, or from any useful and necessary private business; and, consequently, could not, on the principles already stated and universally recognized as sound, constitute any basis for taxation. On the other hand, the argument has been, that corporations for the construction of turnpikes, canals, railroads, etc., have a duplicate nature, and are both public and private; that the taking of property for them is universally recognized as being for a public use; that the ways they construct or propose to construct are *quasi*-public highways on which the public at large are entitled to equal and impartial accommodations, and that for all these reasons there is a public interest in their construction which constitutes them public purposes within the meaning of the law of taxation, and renders the question of public assistance to them a question purely of policy and not at all one of power.

The question concerns first, the power of the state, and second, the power of municipal bodies. So far as the state at large is concerned, a large preponderance of decisions is in support of the authority to aid these corporations by an exercise of the power to tax, and this by taking stock in such corporations, or by making to them loans or donations.¹ As to the municipal bodies, it is conceded that they have no such power unless it is specially conferred by the legislature; the general authority to construct streets, roads, and bridges not comprehending such a case.² It is also conceded that any special authority must be strictly pursued, or the action of the municipality under it will be invalid.³ But when the legislature

¹ "Improvement of coasts and harbors, and all that is necessary for the security of external commerce, must be done by the public. Internal improvements, such as roads, canals, railroads, etc., may, in general, be safely left to individual enterprise. If they would be a profitable investment of capital, individuals will be willing to undertake them. If they would be an unprofitable investment, both parties had better let them alone. The only case in which a government should assume such works is that in which their magnitude is too great to be intrusted to private corporations. Whenever they are undertaken, the principles on which the expenditures should be made are the same as those which govern the expenditure of individuals." Wayland's *Pol. Econ.*, b. 4, ch. 3, §. 2. There are probably not many now who doubt the soundness of this as a rule of public policy, but the rule of policy is not necessarily the rule of constitutional law. In Michigan the constitution provides that the state shall not engage in work of internal improvement, except by granting lands thereto; and taxes by the state for the improvement of roads or rivers are, therefore, invalid in that state: *Ryerson v. Utley*, 16 Mich. 269; *Hubbard v. Springwells T'p Board*,

25 Mich. 153; *Anderson v. Hill*, 54 Mich. 477; *Sparrow v. State Land Office Com'r*, 56 Mich. 567; *Wilcox v. Paddock*, 65 Mich. 23; *Gibson v. State Land Office Com'r*, 121 Mich. 49.

² *Bullock v. Curry*, 2 Met. (Ky.) 171; *Stokes v. Scott County*, 10 Iowa 166, 173; *State v. Wapello County*, 13 Iowa 388; *Lafayette v. Cox*, 5 Ind. 88. See *Floyd v. Perrin*, 30 S. C. 1. A tax in aid of a railroad, consented to under the provisions of the constitution by owners of taxable property, is not a "parish" tax, but is levied on the theory of local benefits, and the taxes, though collected by the parish authorities, are not parish moneys: *Fullilove v. Police Jury*, 51 La. An. 359. A tax voted by a township to aid in the construction of a railroad is not a state, county, or municipal tax; and under a statute entitling a manufacturing company to have refunded its state, county, and municipal taxes, such a company paying a railroad aid tax is not entitled to have it refunded: *Carolina, C. G. & C. R. Co. v. Tribble*, 25 S. C. 260.

³ See among other cases to this effect: *Commissioners v. Thayer*, 94 U. S. 411; *People v. Cline*, 63 Ill. 394; *Harding v. Railroad Co.*, 65 Ill. 90; *Chicago, etc. R. Co. v. Coyer*, 79 Ill. 373; *People v. Oldstown*, 88 Ill. 202;

has thought proper to confer the power, and care has been observed to keep strictly within it, in the municipal action, the same cases already referred to sustain the action as standing on the same ground, and as being supported by the same reasons which would support the like action when taken by the state itself.¹

Portland, etc. R. Co. v. Standish, 65 Me. 63; Gray v. Mount, 45 Iowa 591; Packard v. Jefferson Co., 2 Col. 338; Leavenworth, etc. R. Co. v. Platte Co., 42 Mo. 171; Horton v. Thompson, 71 N. Y. 513. It is no objection to a vote of railroad aid that the corporation to be aided is to construct and operate both a railroad and a telegraph line: Snell v. Leonard, 55 Iowa 553.

¹Talbot v. Dent, 9 B. Monr. 526; McClenahan v. Curwen, 3 Yeates 363; Commonwealth v. Williams, 11 Pa. St. 61; Goddin v. Crump, 8 Leigh 120; Thomas v. Leland, 24 Wend. 65; Brown v. Hartford, 100 N. C. 928. A statute may authorize a city to levy by vote a tax to assist a domestic corporation, organized for pecuniary profit, in constructing a toll bridge to be used as a highway and for railway purposes: Pritchard v. Magoun, 109 Iowa 364. A tax levied by the authorities of a parish on taxable property of one of the wards, on proposition of taxpayers, in aid of a railroad, held constitutional: Fullilove v. Police Jury, 51 La. An. 359. Where railroad aid has been voted, the vote is not defeated by subsequent legislation directing that the certificates of stock issued therefor shall be issued to individual taxpayers: Commissioners v. Lucas, 93 U. S. 108. That the time within which the road should be completed was not fixed in the petition will not authorize an injunction against the collection of the tax before the completion of the road, since the commissioners may withhold the money until the road is completed; and no

forfeiture of the taxes levied having been legally declared, such collection cannot be enjoined because the construction of the road was not commenced within two years, or because the road was not completed through the township within three years after the levy of the tax: Pittsburgh, C., C. & St. L. R. Co. v. Harden, 137 Ind. 486. In Casady v. Lowry, 49 Iowa 523, it was held that no part of a railroad-aid tax is collectible until it is earned. Where aid is voted to a railroad on condition of the road's being constructed to a specified point, it is not a compliance with the condition to purchase an existing railroad to that point: Lamb v. Anderson, 54 Iowa 190; Meeker v. Ashley, 56 Iowa 188; Railroad Co. v. Schenck, 56 Iowa 628. For a discussion of sundry questions arising under the Iowa railroad-aid tax law, see Merrill v. Welshe, 50 Iowa 61. In Louisiana it is held that a special tax for the benefit of a railroad inures to the benefit of a corporation resulting from the consolidation of the corporation for which the tax was voted with another; the object of the tax being the construction of the railroad: Vicksburg, S. & P. R. Co. v. Scott, 52 La. An. 512. A railroad-aid tax will not be enjoined because a narrow gauge is adopted, the subscription not having specified the gauge: Meader v. Lowry, 45 Iowa 684. The validity of a tax is not affected by the fact that the route of the road is changed after the vote, if the route was not a condition of the vote: Shontz v. Evans, 40 Iowa 139. A condition to an aid

It has been decided that an assessment for making and opening a road where no road has in fact been laid out, and where, consequently, the land is the subject of private ownership, and no highway would exist when the money was expended, would be illegal and void.¹ It has also been held that a city has no authority to assess on abutters upon a street the expense of a well-race running through the center of the street and owned by private persons. The duty of the owners of the race to restore the street which they occupied to a passable condition could not thus be transferred to the public or to any portion of the public.² There is no doubt of the right of the legislature to enact laws for the levy of taxes for the construction of gravel roads.³ It has been decided that the taxation of a city for the construction of a subway which shall be leased to a street-car company and used for the carriage of such pas-

vote that a station shall be located within the town is competent: *Bittinger v. Bell*, 65 Ind. 445. See *Blanchard v. Detroit, etc. R. Co.*, 31 Mich. 43. A railroad cannot be taxed by a county to pay the county's subscription to aid in its construction: *Applegate v. Ernst*, 3 Bush 648; *Louisville & N. R. Co. v. Commonwealth*, 89 Ky. 531. *Contra*, *State v. Keokuk & W. R. Co.*, 153 Mo. 157. But when a company's franchises have been purchased by a new company, the new company's property in the county, except such as it acquired by the purchase from the old company, is subject to taxation for the payment of its part of the county's subscription to aid in the construction of the old road: *Owensboro & N. R. Co. v. Daviess County (Ky.)*, 3 S. W. Rep. 164. See *Louisville & N. R. Co. v. Hopkins County*, 87 Ky. 605. Railroad company's property held liable to taxation for compromise settlement of bonds issued in aid of it: *Elizabethtown, L. & B. S. R. Co. v. Carter County*, 18 S. W. Rep. 370. The property of a railroad company located in a township where a tax is legally

levied to aid in the construction of another and competing company is subject to such tax though it did not acquiesce in its levy and may be injured by the competing road: *Pittsburgh, C., C. & St. L. R. Co. v. Harden*, 137 Ind. 486; *Baltimore & O. P. R. Co. v. Jefferson County*, 29 Fed. Rep. 305.

¹ *Philbrook v. Kennebeck*, 17 Me. 196. And see *People v. Saginaw Supervisors*, 26 Mich. 22. If a bridge rests on private property an assessment for building it is void: *Pacific Bridge Co. v. Kirkham*, 54 Cal. 558. Where an assessment for a road tax is not made for any existing roads, or in contemplation of any intended to be opened, and it is impossible to use the tax at all in the road-district where it is levied, such assessment is invalid: *Michigan Land, etc. Co. v. L'Anse T'p*, 63 Mich. 700. The assessment of highway taxes for roads that are in contemplation but are not yet laid out is not necessarily illegal: *Sawyer-Goodman Co. v. Crystal Falls*, 56 Mich. 597.

² *People v. Rochester*, 54 N. Y. 507.

³ *Ricketts v. Spraker*, 77 Ind. 371.

sengers as pay the regular fare is taxation for a public purpose, and hence valid.¹

Municipal water and gas works. The propriety and necessity of provision by taxation for a supply of water for the extinguishment of fires, and for the general use of the inhabitants of large towns, is not disputed. Costly expenditures are sometimes made in the construction of public works for these purposes, and large sums are in some instances paid to corporations or individuals who furnish or contribute to furnish the public supply.² Cities may also be authorized to construct gas works in order to furnish their citizens with light as well as to supply the corporate needs,³ or they may be empowered to contract for the corporate wants with private corporations or persons.⁴ The supplying of cities and towns and their citizens with natural gas for public and private consumption has been held to be a public need or purpose, and hence the taxing power may be exercised to provide for the payment of the principal and interest of bonds issued to carry out the purpose of such supply.⁵

Military and other bounties. The general government having authority to declare war and conduct warlike operations, no question can exist of its right to levy taxes in order to pay bounties for military services performed or promised. The several states may with as little question do the same. But it is no part of the duty of a township, city, or county, as such, to raise men or money for warlike operations; and under the

¹ Prince v. Crocker, 166 Mass. 347.

² Mayor of New York v. Bailey, 2 Denio 433; West v. Bancroft, 32 Vt. 367; Rome v. Cabot, 28 Ga. 50; Wells v. Atlanta, 43 Ga. 67; Youngerman v. Murphy, 107 Iowa 686. Under a statute authorizing municipal authorities to construct and maintain water-works, and to collect from the inhabitants such rates for water supplied as shall seem expedient, a city may levy water rates that will yield a revenue in excess of the cost of operating the works, even though they were originally constructed by

the city for the purpose of supplying water for itself and its inhabitants, and not for purposes of profit: Wagner v. Rock Island, 146 Ill. 139. That it is competent to provide by legislation a special water precinct in a city for water works, and levy a tax within the same, see Brown v. Concord, 56 N. H. 375.

³ See Western Fund Saving Soc. v. Philadelphia, 31 Pa. St. 175, 185.

⁴ See Nelson v. La Porte, 33 Ind. 258.

⁵ State v. Toledo, 48 Ohio St. 112. See Fellows v. Walker, 39 Fed. Rep. 651.

general grant of municipal powers, they are without authority to impose upon their people any burden by way of taxation for any such purpose.¹ No reason is perceived, however, which should preclude them, under the proper legislative sanction, from devoting their funds to this purpose to any extent that may be necessary to enable them to secure a voluntary performance of any duty which may rest upon their inhabitants to contribute their proportion to the public defense. And so are the authorities. The several municipal divisions of the state, under proper enabling legislation, may promise and pay bounties to those who will volunteer to fill any call made upon their people for their proportionate contribution to the public armies in time of actual or threatened hostilities.² They may also pay bounties to those who have voluntarily entered the public service from or as representing their locality in advance of any such promise.³ And they may raise moneys by tax in order to refund to individuals any sums advanced by them to relieve the municipality from a draft, or to fill its assigned quota of a call, on an understanding, based upon informal cor-

¹ *Stetson v. Kempton*, 13 Mass. 272; *Gove v. Epping*, 41 N. H. 539, 545; *Crowell v. Hopkinton*, 45 N. H. 9; *Baldwin v. North Brandford*, 32 Conn. 47; *Webster v. Harwinton*, 32 Conn. 131; *Cover v. Baytown*, 12 Minn. 124; *Petersburg v. Noss*, 52 Pa. St. 448; *Meek v. Bayard*, 53 Pa. St. 217; *Fiske v. Hazard*, 7 R. I. 438; *People v. Supervisors of Columbia*, 43 N. Y. 130; *Alley v. Edgecombe*, 53 Me. 446; *Wahlschlager v. Liberty*, 23 Wis. 362; *Wilson v. Buckman*, 13 Minn. 441. Furnishing a uniform for a voluntary military company is not within the compass of "town charges:" *Claffin v. Hopkinton*, 4 Gray 502.

² *Speer v. School Directors*, 50 Pa. St. 150, 159; *Waldo v. Portland*, 33 Conn. 363; *Bartholomew v. Harwinton*, 33 Conn. 408; *Fowler v. Danvers*, 8 Allen 80; *Lowell v. Oliver*, 8 Allen 247; *Cass v. Dillon*, 16 Ohio St. 38; *Opinions of Justices*, 52 Me. 590, 595; *Washington County v. Berwick*, 56 Pa. St. 466. Where the municipality

has taken action for the payment of such bounties in advance of legislative authority, it may be conferred retrospectively: *Booth v. Woodbury*, 32 Conn. 118; *Crowell v. Hopkinton*, 45 N. H. 9; *Schackford v. Newington*, 46 N. H. 415; *Ahl v. Gleim*, 52 Pa. St. 432; *Weister v. Hade*, 52 Pa. St. 474; *Grim v. School District*, 57 Pa. St. 433; *Coffman v. Keightly*, 24 Ind. 509; *Board of Com'rs v. Bearss*, 25 Ind. 110; *Comer v. Folsom*, 13 Minn. 219; *State v. Demorest*, 32 N. J. L. 528; *Taylor v. Thompson*, 42 Ill. 9; *Barbour v. Camden*, 51 Me. 608; *Hart v. Holden*, 55 Me. 572; *Burnham v. Chelsea*, 43 Vt. 69; *Butler v. Putney*, 43 Vt. 481; *Lowell v. Oliver*, 8 Allen 247.

³ *Brodhead v. Milwaukee*, 19 Wis. 624, 652. See, also, *Freeland v. Hastings*, 10 Allen 570; *Cass v. Dillon*, 16 Ohio St. 38; *State v. Richland*, 20 Ohio St. 362; *Veazie v. China*, 50 Me. 518; *Kunkle v. Franklin*, 13 Minn. 127.

porate action, that the sums should be refunded when legislation could be had permitting it,¹ and perhaps, also, where the advancements were made without any such informal action.² But they cannot be empowered to refund to individuals sums which such individuals may have paid in order to procure substitutes, or for commutation in military service, for themselves as individuals, in an impending draft. Such payments being made by the parties in their own interest, the repayment of them by the public could be nothing else than an appropriation of public moneys to a private purpose.³

Protection against calamities. Under the head of calamities against which the government should or might make provision for protection may be mentioned fires,⁴ the overflow of the country by great freshets, the washing away of the shores of the sea, or the banks of rivers in populous districts, destruction of persons or property by wild beasts, and the like. If the danger is sufficiently great and extensive to make the threatened calamity a matter of general concern, the purpose is public; if not, it will not justify taxation.

Payment of the public debt. For whatever purposes taxes may be laid, government may contract debts. The converse of this is equally true, that for whatever purposes debts may be contracted, taxes may be laid. It follows that the payment of the public debt is always a public purpose, not only because

¹ *Weister v. Hade*, 52 Pa. St. 474. See *People v. Sullivan*, 43 Ill. 412, 413; *Johnson v. Campbell*, 49 Ill. 316; *Susquehanna Depot v. Barry*, 61 Pa. St. 317. Compare *Gregg v. Jamison*, 55 Pa. St. 468.

² *Kelley v. Marshall*, 69 Pa. St. 319; *Freeland v. Hastings*, 10 Allen 570, 585. See *Hilbish v. Catherman*, 64 Pa. St. 154; *Micheltree v. Swezey*, 70 Pa. St. 278; *Cass v. Dillon*, 16 Ohio St. 38; *State v. Harris*, 17 Ohio St. 608; *Perkins v. Milford*, 59 Me. 315. Compare *People v. Supervisors*, 16 Mich. 254.

³ *Freeland v. Hastings*, 10 Allen 570; *Tyson v. School Directors*, 51 Pa. St. 9. See, also, *Crowell v. Hop-*

kinton, 45 N. H. 9; *Miller v. Grandy*, 13 Mich. 540; *Pease v. Chicago*, 21 Ill. 500, 508; *Ferguson v. Landram*, 5 Bush 230; *Estey v. Westminster*, 97 Mass. 324; *Usher v. Colchester*, 33 Conn. 567; *Kelley v. Marshall*, 69 Pa. St. 319; *Perkins v. Milford*, 59 Me. 315; *Thompson v. Pittston*, 59 Me. 545; *Cover v. Baytown*, 12 Minn. 124; *Bush v. Board of Supervisors*, 159 N. Y. 212.

⁴ In *Van Sicklen v. Burlington*, 27 Vt. 70, 75, it was held competent for a town, in its corporate capacity, to vote money for procuring apparatus for the extinguishment of fires, and to aid fire companies formed for the purpose.

of the importance of meeting the public engagements, but also because the debts themselves were contracted for public purposes. But an unlawful debt is no debt at all. If it has been contracted in violation of law or of the constitution, and for any other than a public purpose, it cannot be a public purpose to make provision for its payment. The purpose must be determined by the consideration for the debt, and not by the fact that public officials have unwarrantably assumed to contract it.¹

¹See *Nouges v. Douglass*, 7 Cal. 65, 75. The legislature in California has no constitutional power to tax the people to pay a void debt, *e. g.*, one incurred under an unconstitutional statute: *Miller v. Dunn* (Cal.), 11 Pac. Rep. 604. An act imposing a tax on the people of a territory embraced within the limits of an ostensible municipal corporation which has been judicially decided never to have been incorporated, to pay the debts of such municipality, is unconstitutional: *Sun Vapor Electric Light Co. v. Kenan*, 88 Tex. 197, following *Ewing v. Commissioners' Court*, 83 Tex. 666. Where a judgment was recovered against a county for a valid debt, evidenced by warrants duly issued by the county authorities, the county court has authority to levy a tax to pay the debt, and, even if such judgment is void, the county treasurer will not be enjoined from paying such indebtedness with the money raised for that purpose, the warrants being undoubted evidence of the debt: *Bush v. Wolf*, 55 Ark. 124. A statute authorizing certain cities, for the purpose of paying "lawfully contracted" debts, to levy and collect a tax of twenty-five cents on the \$100 valuation, in addition to the amount levied for general purposes, authorizes the levy of such a tax to pay a judgment recovered against the city for an injury: *Sherman v. Langham*, 92 Tex. 13. Where a city levied a tax to pay certain

judgments against it, the failure to bring suit for such tax before the payment of the judgments does not affect the liability of the owner of property levied on: *State v. Hamilton*, 94 Mo. 544. A city authorized by charter to levy an additional tax of one per cent. for every purpose the accomplishment of which is authorized by the charter, if approved by two-thirds of the tax-paying voters, cannot levy the extra tax for the payment of a precedent debt; the charter indicates that the liability is to be incurred after the vote has been had: *Denison v. Foster*, 90 Tex. 22. A turnpike tax levied by a county authorized to levy such a tax cannot be defeated on the ground that there was no turnpike debt due when the levy was made, if it appears that money was borrowed from the county's sinking fund to pay the turnpike debt, and has not been repaid: *Marion County v. Louisville & N. R. Co.*, 91 Ky. 388. Where a city council, being authorized to erect water-works, adopted an ordinance levying a tax for a certain amount for the sinking of an artesian well, the fact that the cost cannot be known in advance, or that the effort to obtain water may prove a failure, cannot be urged as an argument that the ordinance fails to establish any system of water-works, and that, therefore, there is no basis for taxation: *Taylor v. McFadden*, 84 Iowa 262. A power to levy taxes for general and contin-

Miscellaneous expenditures. A very large proportion of all the public expenditure is for purposes which could not well be particularized here, but which need no specification. They are purposes which always pertain to government, and for which, in an especial sense, government is founded. Such are the general preservation of public order through the enforcement of police laws, the general administration of justice, and the like. These are matters the burden of which is usually apportioned by the state among its municipalities, but, to secure vigilance and a feeling of responsibility, these bodies are sometimes required to give protection against exceptional disorders,

gent expenses, and any other expenses not otherwise provided for, will authorize a levy to pay a debt: *Spring v. Collector*, 78 Ill. 101. Statutory authority possessed by a city to levy and collect taxes on the taxable property of the city for city purposes carries with it power to levy and collect taxes for the payment of debts incurred for such purpose or for city improvements: *Shepard v. Kaysville*, 16 Utah 340. Where a city has power "to levy annually an additional tax to pay the whole interest of the public debt due from said city," the levy may include back interest as well as that which is due for the year: *Aurora v. Lamar*, 59 Ind. 400. A statute providing that town trustees shall add to the tax duplicate of each year a levy sufficient to pay the annual interest on, and create a sinking fund for, any debt contracted upon petition of the citizen owners of five-eighths of the taxable property of the town, does not authorize a tax to be levied to pay interest on bonds issued under a different statute and not on petition of property owners: *United States v. Town of Cicero*, 50 Fed. Rep. 147. A tax is not unconstitutional because its proceeds may be applied to the payment of a debt incurred in excess of a constitutional limitation: *Forsyth v. Hammond*, 68 Fed. Rep. 774, 71 Fed. Rep. 443, 18 C. C. A. 175. The fact that an improper use has been made of the money collected under the levy of one year does not render invalid the levy for the succeeding year: *Peoria & P. U. R. Co. v. People*, 183 Ill. 19. See *Clee v. Trenton*, 108 Mich. 293. Under a statute which requires officers to levy a tax "for all the expenses and disbursements which by a careful estimate shall be required for that year," and to pay all claims against the county authorized by law, it is competent to embrace in the levy a sum for contingent expenses which experience has shown to be reasonable: *Webster v. Baltimore County Com'rs*, 51 Md. 395. Where the fiscal court of a county is authorized by statute to levy a tax to defray "current and necessary expenses," and to secure "a comfortable and convenient place for holding court at the county seat," it may, within lawful limits, make levies to accumulate a fund within which to pay for a court-house when needed in the future; this does not violate a constitutional provision commanding a county to live within its income, and to create no indebtedness in any year beyond its income unless authorized by a vote of the people: *Combs v. Letcher County (Ky.)*, 54 S. W. Rep. 177.

at the risk of exceptional taxation of themselves if they neglect it. The case of laws imposing responsibility for riots and mobs will furnish an illustration.¹ The more common objects for which towns and cities customarily levy taxes are passed over as not requiring enumeration.²

¹ See ch. XXI.

² What is a township purpose, and what taxes may be assessed therefor, and by whom assessed, are matters for the determination of the legislature: *Chicago, B. & Q. R. Co. v. Klein*, 52 Neb. 258. In the case of *Van Sicklen v. Burlington*, 27 Vt. 70, 75, it was said by *Isham, J.*: "There is no doubt that towns or municipal corporations, as well as private corporations, are limited to the exercise of such powers as are expressly given them; that is, the inhabitants of a town cannot by a vote impose a tax, or appropriate their funds, for objects entirely foreign to their political or municipal duties—such as to build a county jail (10 Vt. 506); to repel the public enemies of the country (13 Mass. 272); or to build a county road (11 Pick. 396). But when the object is within their duty and jurisdiction as a municipal corporation, they may exercise such powers as will enable them fully to discharge the duties devolving upon them. Our statute on this subject is nearly a transcript of that of Massachusetts. In that state it is provided by statute that 'towns may vote money as they shall judge necessary for the support of the ministry, schools, the poor, and other necessary charges arising within the same town.' On the question whether this latter and general clause is limited to the objects previously specified, *Ch. J. Shaw*, in the case of *Willard v. Newburyport*, 12 Pick. 230, observed, 'that it seems very clear that this statement was not intended to be an enumeration of objects and purposes for which towns may raise money, but the ex-

pression of a few prominent objects by way of instance, and a general reference to others, under the term of other necessary charges.' On the same construction, the general words in our act, that money may be voted 'for the prosecution and defense of their common rights and interests, and for all other necessary and incidental charges,' must not be limited to the objects specially mentioned in that act, but will be extended to other matters that fall within their rights and duties. It has always been found difficult to define the limits within which towns may act, or give any definite rules by which we may ascertain when their votes will be deemed illegal. *Ch. J. Shaw* observed, 'that perhaps no better approximation to an exact description can be made, than to say that it embraces that large class of miscellaneous subjects affecting the *accommodation and convenience* of the inhabitants, which have been placed under the municipal jurisdiction of towns by statute or usage.'" A tax to repair a meeting-house, and to pay the sexton for ringing the bell, is *prima facie* not a town purpose, but it may be shown by the vote to levy it to be such by showing that it is to be done as compensation for the use of the meeting-house for town purposes: *Woodbury v. Hamilton*, 6 Pick. 101. A town may appropriate money for the repair of a fire-engine used by the town but owned by individuals: *Allen v. Taunton*, 19 Pick. 485. And for the repair and regulation of clocks used for the benefit of the citizens of the town generally: *Willard v. Newburyport*, 12 Pick. 227.

Exclusiveness of public interest. The purposes to be accomplished by taxation need not be exclusively public in order to warrant an exercise of the power. There are sometimes cases in which the public have equally with private parties an interest, and in which, therefore, an apportionment of the burden between the public and such individuals might be appropriate. In such cases the public interest may properly invoke legislative action for the levy of a tax; and the legislative determination as to the just proportion to be borne by the public must be conclusive, so far at least as the public are concerned.¹ Cases in illustration might be suggested of a building for the common use of the public authorities and of private parties, and of a way for the use of the public, but in which individuals have such a peculiar and special interest that the public authorities may decline to do more than to share with

A statute authorizing a city to water certain streets at the expense of the city, and others at the expense of the abutters, was sustained: *Sears v. Board of Aldermen*, 173 Mass. 71. To what extent municipal corporations may be legally justified by their general grant of power in levying taxes to defray the expenses of procuring legislation for their benefit, has in some cases been made a question. The bounds of such authority must, it is conceived, be very much restricted. Probably no case which comes within the principle of the early Rhode Island tax to raise for Mr. Roger Williams £100, to remunerate him for obtaining the colonial charter (*Arnold's Rhode Island*, vol. 1, p. 205), would be questioned. Some attention to the interests of a local community at the state capital is frequently essential, and perhaps in some cases the expense may be considered a proper municipal charge. See *Bachelor v. Epping*, 8 Fost. 354. Compare *Frankfort v. Winterport*, 54 Me. 250. But a town cannot tax its inhabitants to pay for services rendered in securing the passage of

an unconstitutional law: *Mead v. Acton*, 139 Mass. 341. Nor can a city incur indebtedness for expenses of a campaign to secure the selection of a city as the capital of the state, and warrants issued in payment of such expenses are void: *Shannon v. Huron*, 9 S. D. 356. And lobby services are services a municipality has no right to employ and no power to pay. The practice is immoral and corrupting, and will not be tolerated in the law. The subject is fully and satisfactorily considered and discussed by *Chapman, J.*, in *Frost v. Belmont*, 6 Allen 152, who, in denying the right of a town to pay for lobby services in procuring its charter, cites with approval the cases of *Pingrey v. Washburn*, 1 Aiken 264; *Gulick v. Ward*, 10 N. J. L. 87; *Wood v. McCann*, 6 Dana 366; *Clippinger v. Hepbaugh*, 5 W. & S. 315; *Harris v. Roof*, 10 Barb. 489; *Sedgwick v. Stanton*, 14 N. Y. 289; *Fuller v. Dame*, 18 Pick. 472. And see *Hatzfield v. Golden*, 7 Watts 152.

¹ See *Eddy v. Wilson*, 43 Vt. 362. Compare *Greenbanks v. Boutwell*, 43 Vt. 207.

such parties the expense of the way. Taxation in these cases has relation to the public interest only, and the fact of private interest in the same object is an incidental circumstance of no legal importance.¹

¹ Compare and distinguish *People v. Campbell*, 37 Minn. 498; *Whiting v. Parks*, 58 Cal. 624; *MacKenzie v. Sheboygan, etc. R. Co.*, 25 Wis. 167, *Wooley*, 39 La. An. 944; *Coates v.* 180.

CHAPTER V.

THE PURPOSE MUST PERTAIN TO THE DISTRICT TAXED.

The general rule. In the preceding chapter we have endeavored to show that, in order to give validity to any demand made by the state upon its people under the name of a tax, it is essential that the purpose to be accomplished thereby shall be public in its nature. But it is equally essential, as there intimated, that the purpose shall be one which in an especial and peculiar manner pertains to the district within which it is proposed that the contribution called for shall be collected, and which concerns the people of that district more particularly than it does others. The federal constitution recognizes this principle in the provisions it makes to prevent the federal government from indirectly imposing its support upon one or more of the states to the relief of others.¹ But the power of a state over its municipalities is so great, and its control of taxation for their purposes as well as for its own is so extensive, that some further consideration of the restraints which rest upon state power in this regard will not be out of place or unimportant.

Taxes are collected as *proportionate* contributions to public purposes.² But to make them such in any true sense, they must not only be such as between the persons called upon to pay them, but also as between those who *ought* to pay them. It is therefore of prime necessity in taxation that it should first be determined what public — whether state or local — should bear the burden, and that it should then be imposed ratably as between those who constitute that public. If a single township were to be required to levy upon its inhabitants and collect and pay over to the state whatever moneys were necessary to pay the salaries of the several state officers, it would be apparent, “at first blush,” that the enactment was not one which, either in its purpose or tendency, was calculated to make

¹ U. S. Const., art. 1, § 8, cl. 1; § 9, cl. 4, 5.

² *Oliver v. Washington Mills*, 11 Allen 268.

the taxpayers of that township contribute only their several proportions to the public purpose for which the tax was to be levied. If, on the other hand, for the purpose of purchasing and ornamenting a city park or any other improvement of mere local convenience, a tax should be imposed upon the whole state, it would be equally manifest that equality and justice were not the purpose of the imposition, but that, if carried into effect, the people of the state not residing in the city would be compelled to contribute to a purpose in which, in a legal sense, they had no interest whatever. As has been well said: "If the legislature should arbitrarily designate a certain class of persons on whom to impose a tax, either for general purposes or for a local object of a public nature, without any reference to any rule of proportion whatever, having no regard to the share of public charges which each ought to pay relatively to that borne by all others, or to any supposed peculiar benefit or profit which would accrue to those made subject to the tax which would not inure to others, so that in effect the burden would fall on those who had been selected only for the reason that they might be made subject to the tax, we cannot doubt that the imposition of it would be an unlawful exercise of power, not warranted by the constitution, against the exercise of which a person aggrieved might sue for protection."¹ And it is no more incompetent to select classes of persons for exceptional burdens than it is to select districts of the state for that purpose.²

The cases suggested are extreme cases, but the principle that controls them is universal, and a disregard of it is fatal to the tax; and whether the unjust consequences are slight or serious is unimportant. Where the principles of taxation are disregarded, every one is entitled to claim strict legal right; for in no other way can the power be restrained from perversion and

¹ *Bigelow*, Ch. J., in *Dorgan v. Boston*, 12 Allen 223, 237.

² See *Sharswood*, J., in *Hammett v. Philadelphia*, 65 Pa. St. 146, 151. A single county cannot be compelled to tax itself for a purpose which will benefit all parts of the state in the same degree, nor can all of the counties of the state be taxed for the ex-

clusive benefit of a single county: *Steiner v. Sullivan*, 74 Minn. 498. But if the purpose be one which primarily benefits particular political subdivisions of the state, the whole burden may be placed upon them, although the state at large be incidentally benefited thereby: *Steiner v. Sullivan*, 74 Minn. 498.

oppression. It can therefore be stated with emphasis that the burden of a tax must be made to rest upon the state at large, or upon any particular district of the state, according as the purpose for which it is levied is of general concern to the whole state, or, on the other hand, pertains only to the particular district. A state purpose must be accomplished by state taxation, a county purpose by county taxation, or a public purpose for any inferior district by taxation of such district.¹ This is not only just but it is essential. To any extent that one man is compelled to pay in order to relieve others of a public burden properly resting upon them, his property is taken for private purposes, as plainly and as palpably as it would be if appropriated to the payment of the debts or the discharge of obligations which the person thus relieved by his payments might owe to private parties.² "By taxation," it is said in a leading case, "is meant a certain mode of raising revenue for a public purpose in which the community that pays it has an interest. An act of the legislature authorizing contributions to be levied for a mere private purpose, or for a purpose which, though it be public, is one in which the people from whom they are exacted have no interest, would not be a law, but a sentence commanding the periodical payment of certain sums by one portion or class of people to another."³ This principle has met with universal acceptance and approval because it is as sound in morals as it is in law.

¹ It is held in Arkansas that the legislature has not power to create a district for the levy of taxes for general county purposes which does not embrace the whole county: *Hutchinson v. Ozark Land Co.*, 57 Ark. 554. In general, county burdens are raised by uniform taxes on property: *Calam v. Saginaw*, 50 Mich. 7.

² *Lexington v. McQuillan's Heirs*, 9 Dana 513; *Howell v. Bristol*, 8 Bush 493, 497; *Wells v. Weston*, 22 Mo. 384; *Gilman v. Sheboygan*, 2 Black 510; *State v. Haben*, 22 Wis. 661; *Madison County v. People*, 58 Ill. 456; *Bright v. McCullough*, 27 Ind. 223; *Knowlton v. Rock County*, 9 Wis. 410; *Hale v. Kenosha*, 29 Wis. 599;

Sleight v. People, 74 Ill. 47; *People v. Salem T'p Board*, 20 Mich. 452; *St. Charles v. Nolle*, 51 Mo. 122; *Steiner v. Sullivan*, 74 Minn. 498. That part of a statute which provided for the taxation of the property of a county for the payment of the debt of a city within its limits, which debt had been incurred in the purchase and construction of certain highways, was held void: *Simon v. Northup*, 27 Or. 487.

³ *Sharpless v. Philadelphia*, 21 Pa. St. 147, 174. See *Washington Avenue*, 69 Pa. St. 352; *Weber v. Reinhard*, 73 Pa. St. 370; *Lexington v. McQuillan's Heirs*, 9 Dana 513; *Ryerson v. Utley*, 16 Mich. 269; *Sanborn v. Rice*, 9 Minn.

State control of municipalities. The application of the principle is much complicated by that control which the state possesses in respect to its municipalities, and which for most purposes may almost be said to be absolute; and also by the fact that the states very generally make the municipalities districts for the purposes of state taxation, and also use them as conveniences for state purposes in collection. The state not only confers upon its counties, towns, cities, and villages such powers to tax as they possess, but it may to a large extent take to itself the control and disposition of funds collected, though in doing so it should keep in view the general purposes for which the funds have been called for from the people, as a guide in the expenditure provided for.¹ And if municipal powers are taken away, the municipal property, including its tax moneys, collected and uncollected, passes to the state, to be treated as a trust, and managed and disposed of for the benefit of the local community.² But the legislative power over municipalities is not so extensive that they may be required, or even permitted, to tax themselves for a purpose foreign to the objects

258. A tax upon personal property in an unorganized county, imposed and for the exclusive benefit of a contiguous organized county, is an attempt to tax one community for another's benefit, and is therefore void: *Ferris v. Vannier*, 6 Dak. 186. That the legislature has no power to authorize a local board or corporation to levy taxes within its district for general purposes, see *People v. Parks*, 58 Cal. 624; *State v. Leffingwell*, 54 Mo. 458; *Bromley v. Reynolds*, 2 Utah 525. A tax on one community for the benefit not alone of that community, but for the common benefit of that and a larger community not taxed, is void, though it might be otherwise of a burden laid under the police power: *Ex parte Marshall*, 64 Ala. 266. So where a statute imposed a tax upon a town to educate an entire school-district of which the town was a part: *Town of Belle Point v. Pence* (Ky.), 17 S. W. Rep. 197. A school tax assessed

on only a part of the school-district is void: *Auditor General v. McArthur*, 87 Mich. 457.

¹See *Trustees of Schools v. Tatman*, 13 Ill. 27; *Richland Co. v. Lawrence Co.*, 12 Ill. 1; *Harrison v. Bridgeton*, 16 Mass. 16; *Weymouth, etc. Dist. v. County Com'rs*, 108 Mass. 142; *Rawson v. Spencer*, 113 Mass. 40; *State v. St. Louis County Ct.*, 34 Mo. 546; *Palmer v. Fitts*, 51 Ala. 489; *North Yarmouth v. Skillings*, 45 Me. 133; *Payne v. Treadwell*, 16 Cal. 221; *San Francisco v. Canavan*, 42 Cal. 541.

²*Meriwether v. Garrett*, 102 U. S. 472. See *Morgan v. Beloit*, 7 Wall. 613; *Mount Pleasant v. Beckwith*, 100 U. S. 514. Though the state controls the moneys, it is not to be deemed the money of the state, but of the municipality: *Shepherd's Fold v. New York*, 96 N. Y. 137, citing *People v. Ingersoll*, 58 N. Y. 1; *People v. Fields*, 58 N. Y. 491. See *State v. St. Louis County Ct.*, 34 Mo. 546.

for which they are called into being; as, for example, a school corporation cannot be allowed to contract debts or levy taxes in aid of a railroad.¹

When the state makes the municipalities agents in collection, it may hold them responsible for the collection of the whole state levy within their limits, respectively, and leave them to make good any deficiencies. This is not infrequently done,² and when done it is not competent for the municipalities to burden the state tax with the cost of collection or with other deductions, except as the law may permit.³

Violations of the rule of apportionment. The general rule of restricting the levy of a tax to the very district concerned, but making it embrace the whole district, is so plain and reasonable that it is not likely to be overlooked or disregarded, except in cases in which the facts are such as to raise doubts as to its application. There are some cases in which the character of a proposed public expenditure is such that there may be differences of opinion as to the propriety or justice of its being provided for by a small district or a larger one. Cases of highways afford an illustration. In many of the states the cost of these is usually borne by the towns, and it is not surprising to find a general impression prevailing in some quarters that the towns must always and ought always to bear it. But there is probably no state that does not provide for highways of more general importance than the ordinary town ways; highways that are very properly called and treated as state or county roads, and which are made and kept in repair by an expenditure of state or county moneys. In such a case the state or the county is the proper taxing district, and the town will not be taxed for the purposes of the road, except as a part of the larger district to which it belongs.⁴ The state or the county might possibly be the proper taxing district, even though the work were wholly within the town; the importance and cost of the work, and not its locality, being in many cases the con-

¹ Trustees v. Railway Co., 63 Ill. 299; People v. Dupuyt, 71 Ill. 651; People v. Trustees of Schools, 78 Ill. 136; Weightman v. Clark, 103 U. S. 256.

² This is the case in New York: New York v. Davenport, 92 N. Y. 604.

³ Multnomah County v. State, 1 Or. 359.

⁴ See People v. Supervisors of Dutchess, 1 Hill 50; Parsons v. Goshen, 11 Pick. 396; *post*, ch. XXL

trolling consideration.¹ In all such cases legislation must determine what the district shall be.

In cases where the character of the work, as local or general, is plain, the rule of right is clear. If a single locality were to assume to tax itself, or the state were to undertake to tax it, for the construction of a state work or the erection of a state building, no one could hesitate for a moment in saying there was no such right, and that there could be none so long as taxation by the fundamental law is required to be laid by fixed rules, and is not subject to the arbitrary caprice of legislative bodies.² A county has therefore no constitutional authority to lay a tax for a county building on a part of its towns only; neither has it authority, when it has contracted a debt for a county purpose, to levy a tax for the satisfaction of the debt on such part of the towns only as its governing board may think ought in equity to pay it.³ The rule would be the same if a tax were levied for proper local purposes and the corporation were then to undertake, or the state were to require, its application to purposes not properly local; as where a city, which embraced parts of two counties, voted city funds towards the court-house of one;⁴ and where the legislature undertook, after a school tax had been levied, to authorize the expenditure of a part of it for purposes outside the district.⁵ Taxes when authorized to be raised by any public body invested with the power of local taxation must be for public uses under the care of that body; and a county has therefore no constitutional right to lay a tax as for a county purpose, in order that it may be paid over to a part of its towns, or even to the whole of them, to be expended by them.⁶ Such cases would seem to be plain.

¹ See *Supervisors of Will County v. People*, 110 Ill. 511.

² See *Ryerson v. Utley*, 16 Mich. 269; *State v. Haben*, 22 Wis. 661; *Livingston Co. v. Weider*, 64 Ill. 427; *Sleight v. People*, 74 Ill. 47.

³ *People v. Supervisors of Ulster*, 94 N. Y. 263, affirming 30 Hun 148. But where a village has been annexed to a city, and by the terms of annexation it is to pay its own debts, it is competent to assess that portion of

the city exclusively for the payment of such debts: *Cleveland v. Heisley*, 41 Ohio St. 670.

⁴ *Bergen v. Clarkson*, 6 N. J. L. 352. Construction by city of county court-house may be authorized: *Callam v. Saginaw*, 50 Mich. 7.

⁵ *Bromley v. Reynolds*, 2 Utah 525.

⁶ *Attorney-General v. Supervisors*, 34 Mich. 46. See *Stockle v. Silsbee*, 41 Mich. 615. But where a statute provided that a state tax on telegraph

More difficult cases arise where the principle of assessments by benefits is resorted to for improvements which commonly are constructed by an expenditure of the ordinary taxes. In no part of the law of taxation has the practice of our state governments left the discretion of the legislature more entirely unfettered than in laying and apportioning such assessments, and the case must be most extraordinary and clearly exceptional to warrant any court in declaring that the discretion has been abused, and the legislative authority exceeded.¹ In Pennsylvania it has been decided that a case of clear abuse existed in an act imposing a special assessment upon the premises fronting on a country road, and others lying within a certain distance therefrom, for the purpose of constructing the road on a very costly plan; not, as the court found, for the local, but for the general public benefit. The act, consequently, was adjudged void.² It must be conceded that this legislative application of the law of special assessment was of very questionable propriety, and the conclusion of the court was doubtless just, notwithstanding it leaves us in great doubt touching the exact bounds of the legislative discretionary authority in this regard.³

companies should be distributed to the towns in proportion to the number of shares held in them respectively, it was held that whether such distribution was warranted or not, the fact that it was provided for was no defense to the tax; if unwarranted, the remedy was to be sought after payment: *State v. Western Union, etc. Co.*, 73 Me. 518.

¹ *Crane v. Siloam Springs*, 67 Ark. 30.

² *In re Washington Av.*, 69 Pa. St. 352. The owners of property abutting on an ordinary country road cannot be made to bear the expense of improving it; the improvement benefits, and should be paid for by the whole county: *Graham v. Conger*, 85 Ky. 582; *Conger v. Bergman* (Ky.), 11 S. W. Rep. 84; *Conger v. Graham* (Ky.), 11 S. W. Rep. 467; *Sperry v. Flygare*, 80 Minn. 325. The case of *People v. Springwells*, 25 Mich. 153,

in its main facts bears some resemblance to the foregoing. The legislature proposed to assess upon a township the expense of a costly road, which was to be constructed by state agents under state authority, and taken out of the control of local officers. The act was adjudged invalid on the ground that by the constitution the state was forbidden to engage in internal improvements, and the towns were given control of these local works, and of the expenditure of their moneys therefor. See *Baltimore v. Hughes*, 1 Gill & J. 480; *Preston v. Roberts*, 12 Bush 570.

³ *People v. Flagg*, 46 N. Y. 401, may usefully be compared with the case of *Washington Avenue*. It was a case of compulsory town taxation for a like expensive road. See, also, *People v. Supervisors of Richmond*, 20 N. Y. 252; *Shaw v. Dennis*, 10 Ill. 405.

Taxing districts in general. The cases which have been instanced show that the nature of the purpose to be accomplished will, in many cases, determine the district within which the tax must be levied and collected. But, in other cases, there may be questions of fact to be examined and considerations of equity to be weighed before the proper bounds of a taxing district can be fixed upon. When a local improvement is to be made or a local work constructed for the general public good, the general theory of taxation would seem to require that the cost should be collected from the state at large, or, in other words, from the whole public for whose benefit it is to be made. But, as has already been remarked of the common roads, it is not the custom of the country to provide for these improvements by general taxation. Instead of apportioning the cost of each through the state at large, it has been found more satisfactory and more consistent with the general system of local government that the works themselves should be apportioned for construction among the divisions of the state in which they respectively are to be made, and that each division should be left to bear the cost of that which falls within it. The advantages of this system are obvious. Presumptively the cost of these works is apportioned through the state as equally and justly in this mode as by spreading the cost of all among the whole people. Moreover, when each community is thus taxed for those works only which are constructed in the immediate vicinity, and the importance of which its members may be supposed to feel and appreciate, it is reasonable to expect that they will bear the cost more willingly and cheerfully than they would their proportion of a work at a distance, of the necessity of which they could know nothing except by report, and the demand for construction of which they might attribute to local or personal considerations. These are not the only reasons for leaving highways and other public works of a similar nature to be constructed by the local divisions of the state only. Such a course has been found conducive to economy in expenditure, because the community upon which the whole cost falls has the opportunity, and will be certain to have the disposition, to watch with reasonable jealousy in order to see that nothing is wasted and nothing plundered. At the same time, as all local improvements tend to confer special

and peculiar benefits upon the local community beyond what are received by the state at large, the people thus immediately and specially benefited may generally be relied upon to make liberal appropriations for the public works which are to add to the comforts, conveniences, and, perhaps, the adornment of their neighborhood, because the very moneys they thus vote appear to return to them in the increased value which the expenditure confers upon their estates. It is therefore found to be a wise apportionment of the cost of public highways which leaves each separate division of the state, either town or county, to bear the cost which is made within its own limits. And what is said of these will apply equally to school buildings and to the conveniences required for local courts and the general administration of justice in the several municipalities.¹

There is a class of public works, however, which by general consent are not regarded as being general in their nature, though the use thereof must be open to the general public. As an illustration may be taken the case of the pavement of a city street. The street itself is a public highway, but the necessity for a heavy expenditure in paving arises from causes that are purely local, and that, too, in a very restricted sense. Moreover, in large cities, the pavement becomes absolutely essential, and must be made by the owners of adjoining property, if not provided for by the public. The ability to make profitable use of their property depends upon it, and they might, perhaps, be safely left to provide for it at their own expense, if all property was improved and occupied; and if, when individual action was relied upon, there was any method of insuring uniformity of action in the time, manner, and expense of improving the streets. The necessity, however, for public supervision and direction is made imperative by the likelihood of such diversity

¹The aggregate amounts of school taxes levied by a town may be assessed and levied on property in the town generally, without regard to the fact that the money will be applied for the benefit of specific districts in the town: *Griggs v. St. Croix County*, 27 Fed. Rep. 333. A highway tax voted by the township board of a township containing sev-

eral government townships is not necessarily invalid because there are no roads in two of those townships: *Peninsular Iron, etc. Co. v. Crystal Falls*, 60 Mich. 510. To support a township tax for a water supply it is not necessary that every part of the township shall be supplied with water: *State v. Bloomfield*, 47 N. J. L. 442.

of individual views as would prevent voluntary co-operation among property owners; and the necessity for making the improvement a local burden is almost equally imperative, since it is not to be supposed that the state at large would understand and appreciate the absolute need of an improvement which was specially important to comparatively few persons.

Considered as a city work, the expense of paving a street may be levied upon the whole city, or a system of apportionment may be resorted to analogous to that which is adopted in the construction and working of highways in general; that is to say, the cost of any such work may be assessed upon that part of the city which receives peculiar benefits from it. The latter method would require either a division of the city into taxing districts for the several local improvements within it, or the creation of a special taxing district for each improvement, setting apart for the purpose that portion of the city which was believed to receive the special benefits. These special taxing districts are most common, and they are either fixed after an examination of the circumstances of each particular case with a view to ascertaining how far the special benefits extend, and what property shares in them, or they are determined by some general rule which, though it may not be strictly just in any particular case, will, in the main, it is supposed, apportion all such expenses with reasonable equality and fairness. Whether one course or the other shall be adopted must be determined by competent legislation.¹

Establishment of districts. When the nature of the case does not conclusively fix it, the power to determine what shall be the taxing district for any particular burden is purely a legislative power, and not to be interfered with or controlled, except as it may be limited or restrained by constitutional provisions. Reference to the cases cited in the margin will show that this is a principle which the courts assert with great unanimity and clearness.² "The judicial tribunals," it has

¹ See ch. XX. It constitutes no objection to the power of taxation that the burden thereof should be laid upon the territorial district which is exclusively affected by the legislative scheme: *In re Tuthill*, 163 N. Y. 183.

² *Mobile v. Kimball*, 102 U. S. 691; *Stanley v. Supervisors*, 121 U. S. 550; *Spencer v. Merchant*, 125 U. S. 345;

justly been said, "cannot interfere with the legislative discretion, however onerous it may be."¹ And when it was objected that a certain construction of a statute would throw upon one locality the expense of constructing a road for state purposes, "the conclusive answer" was declared to be, "that the state may impose such a burden where, in the wisdom of the legislature, it is considered that it ought to rest."² The right to

Walston v. Nevin, 128 U. S. 578; *Lent v. Tilson*, 72 Cal. 404; *Shaw v. Dennis*, 10 Ill. 405, 416; *Conwell v. Connersville*, 8 Ind. 358; *Schenck v. Jeffersonville*, 152 Ind. 204; *Challis v. Parker*, 11 Kan. 394; *Simpson v. Kansas City*, 46 Kan. 438; *Malchus v. Highlands*, 4 Bush 547; *Hingham, etc. Turnpike v. Norfolk County*, 6 Allen 353; *Mitchell v. Negaunee*, 113 Mich. 359; *Pioneer Iron Co. v. Negaunee*, 116 Mich. 430; *Voigt v. Detroit*, 123 Mich. 547; *People v. Brooklyn*, 4 N. Y. 419, 425; *Bowles v. State*, 37 Ohio St. 35; *King v. Portland (Or.)*, 63 Pac. Rep. 2; *Philadelphia v. Field*, 58 Pa. St. 320; *Kimball v. Grantsville City*, 19 Utah 368; *Langhorne v. Robinson*, 20 Grat. 661. In *Howell v. Buffalo*, 37 N. Y. 267, 273, *Parker, J.*, speaking of the legislative power over special assessments, says: "The legislature was not bound to apportion the tax among the taxable persons within the city, but might, according to its own view of justice and right, apportion the whole tax among a part of such persons. It saw fit to apportion the tax upon the owners of the lands which had been benefited by the improvement, in proportion to the amount of such benefit. As it is impossible, under the doctrine adverted to, to say that it had not the power so to do, so it can scarcely be contended that, in so doing, it violated any principle of justice or right." As to the lands which, under the California statute, can properly be included in an irrigation district: 164 U. S. 112. The legislature has power to cut off a

portion of a school district as it existed when an election for the imposition of a tax was held, leaving the burden of taxation upon those residing in the district thus contracted in area, and the authority of the trustees to act therein unimpaired: *Fitzpatrick v. Board of Trustees*, 87 Ky. 132.

¹ *Ranney, J.*, *Scovill v. Cleveland*, 1 Ohio St. 126, 138. The same judge in *Hill v. Higdon*, 5 Ohio St. 243, 245, after speaking of former decisions in the same state, says: "It was there shown . . . that the right to tax for such a purpose necessarily included the power to determine the extent, and upon what property the tax should be levied; and that its imposition upon the property particularly and specially benefited by the improvement was but a lawful exercise of the discretion with which the legislative body was invested in apportioning the tax." "We see," he says further on, "no reason to doubt the correctness of these conclusions." See, also, what is said by *Rapallo, J.*, in *Gordon v. Cornes*, 47 N. Y. 608, 611. Also *Allen v. Drew*, 44 Vt. 174, 187; *Alcorn v. Hamer*, 38 Miss. 652, 761.

² *Johnson, Ch. J.*, in *People v. Supervisors of Richmond*, 20 N. Y. 252, 255. This statement of the principle is true in a general sense only; if literally true the state would have despotic powers. It is countenanced by *Shaw v. Dennis*, 10 Ill. 405, in which the legislature had required the levy of a special tax upon the taxable property of a single precinct for the purpose of repairing and main-

do this where the constitution has interposed no obstacles is declared to be not now open to controversy, if indeed it ever was.¹ The legislature judges finally and conclusively upon all questions of policy, as it may also upon all questions of fact which are involved in the determination of a taxing district.²

taining a bridge over the Rock river at that place. The court declared the act valid, and that it was always in the power of the legislature to determine the district in which a tax shall be levied. See, also, *Philadelphia v. Field*, 58 Pa. St. 326; *Waterville v. Kennebec Co.*, 59 Me. 80; *Mobile County v. Kimball*, 102 U. S. 691; *Steiner v. Sullivan*, 74 Minn. 498. A county, excluding a city which lies within it, may be constituted a taxing district for the construction of turnpike roads leading to the city; and while some parts of the district may be benefited more than others, the court cannot undertake to measure the benefits received, when determining the validity of the act: *Clark v. Leathers* (Ky.), 5 S. W. Rep. 576.

¹ See *People v. Lawrence*, 41 N. Y. 137; *McFerron v. Alloway*, 14 Bush 580; *Litchfield v. Vernon*, 41 N. Y. 123. Also, ch. XX, where many cases are collected.

² *Litchfield v. Vernon*, 41 N. Y. 123, 133. This was a very peculiar case of a special taxing district for a local improvement. *Grover, J.*, states it thus: "An examination of the case shows that, at the time of the passage of the act, the Long Island Railroad Company had the right of way in a tunnel constructed in Atlantic street, Brooklyn, for a railroad operated by steam, and were operating their road thereon; that the legislature deemed it expedient to close the tunnel, grade the street, lay a track upon the surface to be operated by horse power, etc., and to authorize the making of a contract with the railroad company for doing the work

and effecting the changes for a sum not exceeding \$125,000. To carry into effect this design, the act in question was passed, authorizing the commissioners, whose appointment was provided for in the act, to make the contract, and to make an assessment for the payment of the contract price, together with the incidental expenses, upon the lands and premises situate in the district specified in the act. This local assessment for those purposes, it is apparent, was based upon the ground that the territory subjected thereto would be benefited by the work and change in question. Whether so benefited or not, and whether the assessment of the expense should for this or any other reason be made upon the district, the legislature was the exclusive judge." See, also, *Hoyt v. East Saginaw*, 19 Mich. 39, 43. In *Kansas* it is held that where several streets are to be improved, it is competent to make one district of them all, and apportion the expense by frontage along them all: *Parker v. Challiss*, 9 Kan. 155; *Challiss v. Parker*, 11 Kan. 394. And see *Arnold v. Cambridge*, 106 Mass. 352; *Cumming v. Grand Rapids*, 46 Mich. 150. A district in *Kentucky* for the purposes of railroad-aid taxation included an island nearer the *Indiana* than the *Kentucky* shore, and which could receive no direct benefit from the projected railroad. Held, nevertheless, that the courts could not relieve the island from the taxation, which was imposed in the discretion of the legislature: *McFerron v. Alloway*, 14 Bush 580. A wide extension of school district boundaries, taking in a part

And having the authority to determine what shall be the taxing districts, the legislature must also be left to its own methods of reaching the conclusion. Most cases will be settled by general law; but taxes for extraordinary purposes may require special legislation, or at least may justify it. In such cases it may be proper to enter upon such inquiries into the facts as cannot well be made directly by the legislative body of the state, whose duties are too multitudinous to admit of special investigations on a hearing of evidence or on personal examination by its members. Under such circumstances it may be proper and convenient to refer the whole subject to the local authorities; and this in the case of local works or special improvements is the course usually adopted. The state does not determine whether a city street shall be improved and a tax levied therefor, but, by provision in the city charter, or by special legislation, it refers the whole subject to the city common council, under such directions, regulations, and instructions as it may be thought proper or prudent to give or impose. The state does not divide the several counties and towns into school districts, and order the construction of district school-houses; but by general law submits the subject to the people specially concerned. This is the general course, and it has been found to be the satisfactory and therefore the wise course.

of certain railroad property which would thus be taxed for the erection of a schoolhouse twenty-five miles distant, was held to be authorized: *King v. Utah Central R. Co.*, 6 Utah 281. Land in a levee district not actually benefited, but rather injured, by the levee, was not thereby exempt from the levee tax (where it did not come within the particular exemption made by the constitution), since to hold otherwise would be an attempt on the part of the court to legislate part of a district out of the operation of a tax thereon: *Smith v. Willis*, 78 Miss. 149. The fact that an improvement for which an assessment is made is partly in one town and partly in another will not vitiate the assessment unless it affirmatively ap-

pears that the money raised in one town was not to be expended in the other: *Halsey v. People*, 84 Ill. 89; *Wright v. People*, 87 Ill. 582. Personal property in an unorganized county may be subjected to taxation in the organized county to which it has been attached for judicial and revenue purposes: *Thomas v. Gay*, 169 U. S. 264; *Wagoner v. Evans*, 170 U. S. 588. See *Ferris v. Vannier*, 6 Dak. 186. To raise money to pay bonds for free gravel roads, the county commissioner may be authorized to levy a special tax upon the property of the townships through which the roads extend: *Gilson v. Board*, 128 Ind. 65; *Board of Com'rs v. Harrell*, 147 Ind. 500.

And if an apportionment is to be made on the basis of benefits to property, the local authorities may be and usually are empowered to refer the assessment of benefits to officers or commissioners chosen for the purpose, whose report, when under the provisions of the law it shall become final, will settle the limits of the special taxing district. These, if not the only methods of giving effect to the legislative authority over this subject, are certainly admissible and proper methods.¹

Diversity of districts. Taxing districts may be as numerous as the purposes for which taxes are levied.² The district for a single highway may not be the same as that for the school-house located upon it. It is not essential that the political districts of the state shall be the same as the taxing districts,³ but

¹ *People v. Brooklyn*, 4 N. Y. 419, 430; *Lexington v. McQuillan's Heirs*, 9 Dana 413; *Williams v. Detroit*, 2 Mich. 560; *Dorgan v. Boston*, 12 Allen 223; *Brewster v. Syracuse*, 19 N. Y. 116; *Hingham, etc. Turnpike Co. v. Norfolk County*, 6 Allen 353; *Salem Turnpike, etc. Co. v. Essex County*, 100 Mass. 282; *Appeal of Powers*, 29 Mich. 504; *Voigt v. Detroit*, 123 Mich. 547.

² *Reelfoot Lake Levee Dist. v. Dawson*, 97 Tenn. 151.

³ *People v. Central R. Co.*, 43 Cal. 398, in which it was decided to be competent to divide a county into revenue districts; *Malchus v. Highlands*, 4 Bush 547; s. c., 2 Withrow's Corp. Cas. 361, in which an act was sustained which created a special district near Newport, with authority to grade and pave, or macadamize with rock or gravel, any public road passing through or into the same, on a favorable vote of two-thirds the owners of real estate by or through which any such road may pass. See, also, *County Judge v. Shelby R. Co.*, 5 Bush 225; *Shaw v. Dennis*, 10 Ill. 405; *People v. Haws*, 34 Barb. 69. The legislature, in the exercise of the general power of taxation as distinct from the power of

local taxation, may create a special taxing district without regard to municipal or political subdivisions of the state, and may levy a tax on all property within such district by a uniform rule, for the purpose of constructing or maintaining a public road: *Bowles v. State*, 37 Ohio St. 35; *New York, L. E. & W. R. Co. v. Com'rs*, 48 Ohio St. 249. A strong illustration of legislative power in establishing districts is afforded when several streets are put into one district for the purposes of improvement, and the cost of improving all is assessed throughout the district; as in *Challiss v. Parker*, 11 Kan. 394. The legislature may create a city boundary, or designate any other boundary, for a local taxing district, without reference to existing civil or political districts; and a city, as such a district, may tax property within its limits which it would not be able to tax for municipal purposes only: *Henderson Bridge Co. v. Henderson*, 90 Ky. 498. Special tax districts for road purposes may be created by the legislature without regard to the boundaries of counties, townships, or municipalities: *Gilson v. Board of Com'rs*, 128 Ind. 65; *Board of Com'rs v. Harrell*, 147 Ind. 500. In New Jer-

special districts may be established for special purposes, wholly ignoring the political divisions. A school district may be created of territory taken from two or more townships or counties, and the benefits of a highway, a levee, or a drain may be so peculiar that justice would require the cost to be levied either upon part of a township or county, or upon parts of several such subdivisions of the state.¹ In some states there may be township government within a city, or a city within the bounds of a township, and the fact will create a necessity for special taxing districts, since otherwise taxation for some local purposes could not possibly be properly apportioned.² And

sey taxing districts for specified purposes may, without regard to special benefits, be created out of the parts of an existing political district, provided each part is made a political district with appropriate powers of self-government: *State Street Lighting Dist. v. Drummond*, 63 N. J. L. 493. See *Smith v. Howell*, 60 N. J. L. 384; *Peck v. Raritan T'p.* 52 N. J. L. 319. Several towns may be created a bridge and highway district for the construction and maintenance of a bridge across a river: *State v. Williams*, 68 Conn. 131. As to the lands which, under the California statute, may properly be included in an irrigation district, see *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112.

¹ *County Judge v. Shelby R. Co.*, 5 Bush 225. See, also, *People v. Draper*, 15 N. Y. 532; *Buffalo, etc. R. Co. v. Supervisors of Erie*, 48 N. Y. 93; *Litchfield v. McComber*, 42 Barb. 288, 299; *Sangamon, etc. R. Co. v. Jacksonville*, 14 Ill. 163; *Bakewell v. Police Jury*, 20 La. An. 334; *Malchus v. Highlands*, 4 Bush 547; *Norwich v. County Com'rs*, 13 Pick. 60; *Brighton v. Wilkinson*, 2 Allen 37; *Attorney-General v. Cambridge*, 16 Gray 247; *Salem Turnpike, etc. Co. v. Essex County*, 100 Mass. 282; *Bordeaux v. Meridian, etc. Co.*, 67 Miss. 304. A statute providing that the county commissioner, in order to raise money to pay bonds

for free gravel roads, shall levy a special tax upon the property of the township through which the roads extend, is within the legislative power to assess the cost of local improvements according to benefits: *Gilson v. Board of Com'rs*, 128 Ind. 65; *Board of Com'rs v. Harrell*, 147 Ind. 500.

² In Iowa if a city is within the limits of a township, this does not authorize township highway officers to levy road taxes within the city: *Marks v. Woodbury County*, 47 Iowa 452. But in Illinois in such a case the highway commissioner taxes alike all property in the city and outside, but all funds raised in the city by such taxation are to be expended within it: *Baird v. People*, 83 Ill. 387; *People v. Wilson*, 3 Ill. App. 368; *Britten v. Clinton*, 8 Ill. App. 164. See *Suppiger v. People*, 9 Ill. App. 290. As to meaning of taxes "for road purposes," see *People v. Wilson*, 3 Ill. App. 368. It is held in Indiana that property situated within and taxable by a city is not taxable for township purposes in the township within which lies the city: *Kerlin v. Reynolds*, 135 Ind. 540, 142 Ind. 460. It is held in the same state, however, that a statute providing for turnpikes does not limit the taxable property to that outside of incorporated cities and towns: *Byram v. Board of*

railroads which extend through several of the ordinary taxing districts may seem to require districts specially created, and having regard to no other property.¹ It is compulsory that the political divisions of the state shall be regarded in taxation only where the tax itself is for a purpose specially pertaining to one of them in its political capacity, so that, as already stated, the nature of the tax will determine the district.²

Overlying districts. Even when the purpose for which a tax is demanded pertains to the state at large, or to one of its divisions, so that a general levy throughout the state or such division is essential, there may be peculiar reasons why a part of the general public who are concerned in the purpose should bear a proportion of the burden greater than that which should be borne by the others. A pertinent illustration might perhaps be the case of a tax for the construction of a state capitol. It would be clear, we should say, that such a tax should be spread

Com'rs, 145 Ind. 240. It is for the legislature to determine whether property in a city, as well as that outside, is benefited by the repair of free turnpikes, and should therefore be taxed therefor in common with other property in the county: *Ibid.* In Kansas, a city of the third class, having property assessed at less than \$150,000, is liable to taxation for township purposes in the township where it lies: *Jackson T'p v. Wood*, 55 Kan. 628. It is held in New Jersey that where the voters residing within a city remain voters of the township, and are, therefore, entitled to vote at town meetings on the amount to be raised for roads, a township road tax can lawfully be imposed upon property within the city: *McNeal Pipe, etc. Co. v. Lippincott*, 57 N. J. L. 540. Property owners in an incorporated municipality may constitutionally be required to pay taxes for the improvement of streets in the municipality, and also to pay the general county road-tax: *Wolf v. McHargue*, 88 Ky. 251. The incorporation into a town of a certain district of the

parish under the general town incorporation act does not exempt the inhabitants of such town from jury duty which police juries are authorized to require of all male inhabitants of the parish: *Sanders v. Levi*, 42 La. An. 406. As to taxes levied by township for support of government of unincorporated village within its limits, see *Land, etc. Co. v. Brown*, 73 Wis. 294. A *bona fide* resident of an incorporated city, which, under its charter, has assumed exclusive control over the streets, alleys, and highways within its corporate limits, cannot be required to work the public roads outside of the corporate limits of the city: *Ex parte Roberts* (Tex.), 11 S. W. Rep. 782.

¹ See *Chicago & A. R. Co. v. Lamkin*, 97 Mo. 496.

² *Board of Com'rs v. Harrell*, 147 Ind. 500. A bill providing for public improvements by special tax levied upon districts having territorial limits different from the municipal corporation levying the tax is unconstitutional: *In re House Bill*, 15 Colo. 593, 595.

over the state at large, because the purpose is a state purpose, and every individual in the state is directly interested in its accomplishment. But it is also apparent that the people and the property at the place where the structure is proposed to be constructed would receive special and probably very great benefits in consequence of the construction, beyond what they would receive in common with all others. The fact is often recognized in the voluntary contributions which are made by the people to secure the location and construction of state buildings at the place where they reside or own property; and the question then arises whether these peculiar benefits may not constitute a basis for special taxation. To make them such it would be necessary there should be two taxing districts; the one embracing the whole state, and the other embracing only the district which, in the opinion of the legislature, was so peculiarly benefited as to justify an exceptional burden upon its people and property. In such a case the people within the minor district, which is also embraced within the larger district, would contribute twice to the same burden; but this, though apparently a violation of the principles of taxation, is not so in fact, if the establishment of the minor district has only equality and justice in view, and if each taxpayer, though twice called upon, is by the two assessments only required to pay what, as between himself and the rest of the state, has been found to be his just proportion of a burden which, though general in its nature, distributes its benefits unequally.

This doctrine has been applied in Pennsylvania to the case of a county town, which, in addition to its proportion of the county levy, was specially assessed for the expense of constructing a court-house and jail. "The advantages of a county town," it was said, "are too well appreciated, not to make every village use all its exertions to have a court-house provided for its benefit and convenience; and as its inhabitants profited by, not only the disbursement of the tax among them, but a permanent increase of their business and an appreciation of their property, they were morally bound to contribute in proportion."¹ The same doctrine has been applied in Minne-

¹ *Gibson*, Ch. J., in *Kirby v. Shaw*, *v. State*, 146 Ind. 54, 147 Ind. 476; 19 Pa. St. 253, 261. Cases in Indiana *Schenck v. Jeffersonville*, 152 Ind. to the same effect (Board of Com'rs 204) have been overruled on the

sota by a statute making part of the salaries of the judges of the district court in a certain county a tax upon the county, on the ground that in the judgment of the legislature such county is benefited to a greater degree than other counties by the administration of justice by that court.¹ In the state of New York it has also been applied to a state work of public improvement — a canal — which conferred or was likely to confer local benefits on a locality specially taxed.² It has also been applied to the case of a building erected for the accommodation of a state educational institution. In one case where a local tax was constructed to meet a portion of the cost of erecting at that place a building for the state agricultural college, the principles which underlie such cases were so clearly stated that a quotation from the opinion will be more satisfactory than any synopsis that might be attempted, or any restatement in our own language.

“It may at first sight seem,” it was said, “as if the establishment of a college and its endowment and support by the commonwealth for the education of all persons within the state who might wish to receive instruction in certain branches of science or art, would stand on the same footing as the public schools, and that money raised for such an object ought to be apportioned and distributed in such manner as to bear on all persons and property equally, without resort to local taxation, which would operate partially, and in a certain sense disproportionately. We are not prepared to say that this proposition is in all respects incorrect. We doubt very much whether it would be competent for the legislature to impose the whole burden of supporting such an institution upon any

ground that the statute permitting the taxation was a local act forbidden by the constitution to be passed “for the assessment and collection of taxes for state, county, or road purposes.” *Board of Com’rs v. State*, 155 Ind. 604. Such taxation upon a township is for a county, not a town, purpose: *Ibid*.

¹ *Steiner v. Sullivan*, 74 Minn. 498. A city can be authorized to raise by corporate funds and taxes the entire

money required for a court-house for the county: *Callam v. Saginaw*, 50 Mich. 7.

² *Thomas v. Leland*, 24 Wend. 65. See, also, *Harbor Com’rs v. State*, 45 Ala. 399. The legislature of a state may charge a county with the whole cost of an extensive improvement of a harbor within its limits, even though the improvement is for the benefit of the whole state: *Mobile County v. Kimball*, 102 U. S. 691.

particular municipality, section, or district of the state. But we are clear in the opinion that there may exist a state of facts which would render it just and expedient, and strictly within the exercise of constitutional authority, for the legislature to enact that a portion of such a public burden should be borne by persons and estates situated within certain limits, and to authorize a special assessment on them for that purpose. If the establishment of a public institution of general utility or necessity in a particular locality would be productive of direct and appreciable benefit to persons or estates in the vicinity, either by increasing the value of property there situated, or by the opportunities which it would afford to those residing in the neighborhood to enjoy certain common advantages and privileges with greater facility and at less cost than others having an equal right to participate in them, but who reside or own estates more remotely situated, or in distant parts of the state, we can see no reason why these special advantages or benefits should not be taken into consideration in determining the mode in which the public burden of defraying the cost of the institution should be apportioned and distributed. While perfect equality in the raising of money for public charges is inattainable, it would certainly approximate more nearly to an equitable apportionment of them, to provide that such portion of the expenditure for a public object as will inure directly to the benefit or profit of a certain town or district should be borne by the estates situated and persons resident therein, leaving only that sum to be treated as a public charge, and to constitute a general assessment on all persons and property in the commonwealth, which may reasonably be supposed to be expended for the equal and common benefit of all. Such distribution of a public burden would be reasonable, because it would tend to equality; and it would be proportional, because it would be borne in proportion to the benefits which each would receive.”¹

¹ *Bigelow*, Ch. J., in *Merrick v. Amherst*, 12 Allen 500, 504. See to the same effect, *Marks v. Pardue Univ.*, 37 Ind. 155; *Gordon v. Cornes*, 47 N. Y. 608, 614; *Burr v. Carbondale*, 76 Ill. 455; *Hensley T'p v. People*, 84 Ill. 544; *Livingston County v. Darlington*, 101 U. S. 407; *Briggs v. Johnson County*, 4 Dill. 148. Every such special assessment must of course have express legislative authority. It could not be made under the general power conferred upon a municipality to levy taxes for corporate purposes. On this general subject see *post*, ch. XX.

A like principle is sometimes applied to the construction and improvement of the streets. These, as has been said, constitute highways for the accommodation of the general public, but are calculated, by their improvement, to increase largely the value of all property fronting on or lying in the immediate vicinity of them. Should the legislature determine that the cost of a street improvement should be borne in part by the whole city, and in part by an assessment made on the basis of benefits within a district to which the improvement was exceptionally valuable, we know of no valid legal objection that could be interposed. Whether the city shall bear the whole expense, or the adjacent property the whole, or, as a third resort, the expense be apportioned between two districts, one of which shall include the whole city, and the other the adjacent property only, must be determined by the legislature on a consideration of all the equities bearing on the case.¹ Other local city improvements may undoubtedly be provided for in the same way.

The legislature has sometimes applied the same doctrine to the case of general city taxation; constituting two districts, the one, consisting of the whole city, to be assessed equally, and the other consisting of the more compact portions of the city, which, because receiving a larger share of the benefits of city government, in the protection afforded by the police and fire departments, and the like, was required to pay a greater proportionate share of the expense of such government. It is not perceived that such a case differs in principle from the other cases of overlying districts which have been mentioned. Nevertheless, in some cases the power of the legislature to discriminate in city taxation between what may be designated the *out* property, and that in the parts compactly built, has

¹See *Municipality v. White*, 9 La. An. 446; *Municipality v. Dunn*, 10 La. An. 57; *Chicago v. Larned*, 34 Ill. 203; *Ottawa v. Spencer*, 40 Ill. 211; *Patton v. Springfield*, 99 Mass. 627; *Crane v. Siloam Springs*, 67 Ark. 30; *Kansas City, P. & G. Co. v. Board of Waterworks Imp. Dist.* (Ark.), 59 S. W. Rep. 248. The council of a city held to have power to define by ordinance the territory, within reasonable limits, that shall bear the cost of public fire cisterns: *Louisville Steam-Forge Co. v. Anderson* (Ky.), 57 S. W. Rep. 1188. A city was held to have power to levy a tax upon all the taxable property within its limits to pave the streets in the heart of its business portion with vitrified brick, even though other streets were not so paved: *Maybin v. Biloxi*, 77 Miss. 673.

been denied, on the ground that the city constituted the taxing district for city purposes, and such a discrimination would give distinct rules of taxation within the same district, to the number of which there could be no limit except the legislative discretion; a doctrine wholly inconsistent, it was said, with the constitutional idea of taxation.¹ This conclusion seems to impose restraints on the constitutional power of the legislature to establish taxing districts, which can hardly be justified in reason, or by the decisions in analogous cases. Legislation, such as was thus condemned, has not been uncommon in other states, and in some cases has passed the test of judicial scrutiny,² being sustained on the ground that it is only an equitable apportionment of the burdens of municipal government between those who receive a part of its benefits only, and those who participate in them all.³

A different case has been presented in some other states. City boundaries having been extended so as to embrace the lands of parties who insisted that their premises were agricultural lands merely, and would receive no benefit from the city government, such parties sought the protection of the courts, and prayed for injunction to restrain the imposition upon them of any tax in excess of what they would have been chargeable with had the boundaries not been extended to embrace them. It is to be observed of such cases that the legislature, which alone had authority to determine and fix the proper bounds of the municipal divisions of the state,⁴ and also to establish the

¹ Knowlton v. Supervisors, 9 Wis. 410; New Orleans v. Cazelar, 27 La. An. 156. Perhaps the Wisconsin case should now be regarded as overruled. See Wis. Cent. R. Co. v. Taylor County, 52 Wis. 37, 69. The Louisiana case seems to rely for the doctrine laid down upon a passage from a text-book, where cases were cited, but without approval.

² Serrill v. Philadelphia, 38 Pa. St. 355, 358; Henderson v. Lambert, 8 Bush 607; Benoist v. St. Louis, 19 Mo. 179; Lee v. Thomas, 49 Mo. 112. And see Zanesville v. Richards, 5 Ohio St. 590; Gillette v. Hartford, 31

Conn. 351; Norris v. Waco, 57 Tex. 635.

³ In Gillette v. Hartford, 31 Conn. 351, 357, *Butler*, J., delivering the opinion of the court, assumes as probable that the persons within the city limits whose lands have been brought in by an extension of city lines had been so brought in on the application of the old corporation and against their own desire, and that the discrimination in taxation in their favor was only a just protection against inequality and unfairness.

⁴ It is the business of the legislature to enact general rules by which

taxing districts, had proceeded to do so, and in fixing the city boundaries without any provision for a discrimination in the taxation of property within them, had in effect determined that no such discrimination should or ought to be made. The whole subject was one committed by the constitution exclusively to the judgment and discretion of the legislature, whose members, as in other cases of legislation, would make inquiry into the facts in their own way, and act upon their own reasons. No question could be made of the complete legislative jurisdiction over the case, and if the action was unfair, and led to unequal and unjust consequences, it seems difficult to suggest any ground upon which it could be successfully assailed in the courts that would not warrant a judicial review of legislative action in every case in which parties complain of injustice and inequality. Nevertheless in some cases the courts have considered themselves warranted in inquiring into the facts, in order to determine whether in their judgment the extension of municipal boundaries was fairly warranted; and having reached the conclusion that it was not, and that the extension was made for the purpose of subjecting to taxation adjacent property that would not receive the benefits of municipal government, and was not in fact urban property, they have undertaken to protect the owners of property thus unfairly brought in, against the unequal taxation to which the legislation would expose them. In doing this they have not assumed to nullify the legislative action in extending the municipal limits, but they have undertaken to modify and relieve against its consequences, and to do this upon the express ground that the motive which has influenced the legislation was not legitimate.¹ As the point is stated in one case, it is

the boundaries of incorporated districts may be fixed in the first instance, and by which additions thereto may subsequently be made: *Kansas City v. Union Pac. R. Co.*, 59 Kan. 427.

¹*Cheaney v. Hooser*, 9 B. Monr. 330; *Covington v. Southgate*, 15 B. Monr. 491; *Sharp's Executor v. Dunavan*, 17 B. Monr. 223; *Arbegust v. Louisville*, 2 Bush 271; *Courtney v. Louisville*, 12 Bush 419; *Swift v. New-*

port, 7 Bush 37; *Louisville Bridge Co. v. Louisville*, 81 Ky. 189; *Parkland v. Gains*, 88 Ky. 562; *Covington v. Arthur* (Ky.), 14 S. W. Rep. 121; *Pineville v. Creech* (Ky.), 26 S. W. Rep. 1101; *Louisville & N. R. Co. v. Commonwealth* (Ky.), 30 S. W. Rep. 624; *Morford v. Unger*, 8 Iowa 82; *Langworthy v. Dubuque*, 13 Iowa 86; *Fulton v. Davenport*, 17 Iowa 404; *Buell v. Ball*, 20 Iowa 282; *Deeds v. Sanborn*, 26 Iowa 419; *Davis v. Du-*

the palpable perversion of the power to tax which justifies the judicial interference.¹

Some of these decisions are made by very able judges, whose opinions are always entitled to the highest respect; but it seems difficult to harmonize them with the conceded principles governing the law of taxation. For, 1. They do not question legislation as being in excess of legislative authority, as might be done where taxes are voted for a purpose not public; but they leave the legislation to stand, and only interfere to qualify its effect, on the ground that it has been adopted on improper grounds and will operate unequally. 2. This is done on an inquiry into the facts, and a substitution of the judicial conclusion for the legislative on a subject not at all judicial; a subject, too—the proper limits of city extension—upon which persons are certain to differ widely, and where an inquiry into the facts after the judicial method of an examination of witnesses is usually much less satisfactory than that personal knowledge and investigation which legislators are supposed to possess or to make. This is certainly laying down a rule which cannot be applied generally; it being admitted that the judiciary has no general authority to correct the injustice of legislative action in matters of taxation;² and the weight of authority clearly is that, as regards these cases, the determination of the legislature is conclusive.³ But the legislature has no author-

buque, 20 Iowa 458; *Deiman v. Fort Madison*, 30 Iowa 542; *Durant v. Kauffman*, 34 Iowa 194. For decisions under statutes prohibiting or restricting the taxation for city purposes of agricultural, unplatted, or unimproved lands within city limits, see *Leeper v. South Bend*, 106 Ind. 375; *Dickerson v. Franklin*, 112 Ind. 178; *South Bend v. Cushing*, 123 Ind. 290; *Winzer v. Burlington*, 68 Iowa 279; *Tubbesing v. Burlington*, 68 Iowa 691; *Perkins v. Burlington*, 77 Iowa 553; *Taylor v. Waverly*, 94 Iowa 661; *Farwell v. Des Moines Brick Manuf. Co.*, 97 Iowa 286; *People v. Weaver*, 41 Hun 133; *Bishop v. Tripp*, 15 R. L. 466. Such lands held subject to special assessment for local improvements: *Leitch v. La Grange*,

138 Ill. 291; *Tabor v. Grafmiller*, 109 Ind. 206; *Dickerson v. Franklin*, 112 Ind. 178; *McKeesport v. Soles*, 165 Pa. St. 628. See *Philadelphia v. Sheridan*, 148 Pa. St. 532; *South Chester v. Garland*, 162 Pa. St. 91.

¹ *Swift v. Newport*, 7 Bush 37, 40.

² *Kirby v. Shaw*, 19 Pa. St. 258, 261; *Logansport v. Seybold*, 58 Ind. 225; *Waco v. Texas*, 57 Tex. 635; *Street v. Columbus*, 75 Miss. 822.

³ *Kelly v. Pittsburg*, 104 U. S. 78; *Oliver v. Omaha*, 2 Dill. 368; *Burnett v. Sacramento*, 12 Cal. 84; *Dixon v. Mayes*, 72 Cal. 166; *Linton v. Athens*, 53 Ga. 588; *Cary v. Pekin*, 88 Ill. 154; *Stilz v. Indianapolis*, 53 Ind. 515; *Logansport v. Seybold*, 59 Ind. 225; *Perkins v. Iowa*, 77 Iowa 553; *Ford v. North Des Moines*, 80 Iowa 626;

ity to bring into a municipality territory not contiguous to it and the attempt to do so for the purpose of increasing the local revenues may be treated as void.¹

Mendenhall v. Burton, 42 Kan. 570; *Hurla v. Kansas City*, 46 Kan. 738; *Kansas City v. Union Pac. R. Co.*, 59 Kan. 427; *New Orleans v. Cazelar*, 27 La. An. 156; *Stoner v. Flournoy*, 28 La. An. 850; *Mitchell v. Negaunee*, 113 Mich. 359; *Martin v. Dix*, 52 Miss. 53; *Giboney v. Cape Girardeau*, 58 Mo. 141; *State v. Brown*, 53 N. J. L. 162; *People v. Lawrence*, 41 N. Y. 137; *Kelly v. Pittsburg*, 85 Pa. St. 170; *Hewitt's Appeal*, 88 Pa. St. 55; *Madry v. Cox*, 73 Tex. 538; *Kimball v. Grantsville City*, 19 Utah 368; *Ferguson v. Snohomish*, 8 Wash. 668; *Frace v. Tacoma*, 16 Wash. 69; *Davis v. Point Pleasant*, 32 W. Va. 289; *Washburn v. Oshbosh*, 60 Wis. 453. See *Cook v. Crandall*, 7 Utah 344. Bridge property within the limits of a city may be regarded as so situated with reference to the city that it enjoys such benefits from the city government as to warrant its subjection to municipal taxes: *Henderson Bridge Co. v. Henderson*, 173 U. S. 592; s. c. (Ky.), 36 S. W. Rep. 561; *St. Louis Bridge Co. v. East St. Louis*, 121 Ill. 238; *Point Pleasant Bridge Co. v. Point Pleasant*, 32 W. Va. 328. Vacant lands included within the corporate limits of a city, but so remote as to receive no benefit from the installation of a plant for electric lighting, are yet subject to taxation for the improvement unless the legislature, in the exercise of its discretionary authority to establish taxing districts, makes a discrimination in their favor: *Mitchell v. Negaunee*, *supra*. Taxing for fire protection land that is too far away to be benefited by the tax is not a taking of private property without just compensation: *Wood v. Quimby*, 20 R. I. 482. Since the adoption of the present constitution of Kentucky, requir-

ing all property to be taxed, and that taxation shall be uniform within the territorial limits of the authority levying the tax, all property within the limits of a city is subject to taxation for city purposes without regard to the benefits received, and the cases cited in note 1, page 246, *ante*, do not apply: *Briggs v. Russellville*, 99 Ky. 515; *Pence v. Frankfort*, 101 Ky. 534; *Board of Councilmen v. Scott*, 101 Ky. 615; *Board of Councilmen v. Rarick*, 102 Ky. 352; *Richmond v. Gibson (Ky.)*, 46 S. W. Rep. 702; *Latoria v. Hopkins (Ky.)*, 47 S. W. Rep. 248; *Hughes v. Carroll (Ky.)*, 50 S. W. Rep. 852; *Schuck v. Lebanon (Ky.)*, 53 S. W. Rep. 655; *Bryan v. Central City (Ky.)*, 54 S. W. Rep. 2; *Central Covington v. Park (Ky.)*, 56 S. W. Rep. 650; *Louisville Bridge Co. v. Louisville (Ky.)*, 58 S. W. Rep. 598; *Specht v. Louisville (Ky.)*, 58 S. W. Rep. 607. Even prior to the present constitution of Kentucky, lands included within the boundary of a town at the time the town was incorporated were subject to taxation by the town authorities, irrespective of the question of local benefit: *Central Covington v. Park*, *supra*. And one whose property had been included in the boundaries of a city upon a petition, in which he joined, to the general assembly, was estopped from denying the city's right to tax such property upon the ground that it did not receive its full share of the benefits of the city government: *Lebanon v. Edmonds*, 101 Ky. 216. And see *Simms v. Paris (Ky.)*, 1 S. W. Rep. 543; *Board of Trustees v. Daniel (Ky.)*, 25 S. W. Rep. 746; *Eifert v. Central Covington*, 91 Ky. 194.

¹ *Smith v. Sherry*, 50 Wis. 210.

Extraterritorial taxation. Those cases in which it has been held incompetent for a state or municipality to levy taxes on persons or property not within its limits have generally indicated the want of jurisdiction over the subject of the tax as the ground of invalidity. But such a burden would be inadmissible, also, for the further reason that, as to any property or person outside the district in which the tax was levied, the want of legal interest in the tax would preclude its being subjected to the burden. A state can no more subject to its power a single person or a single article of property whose residence or legal *situs* is in another state, than it can subject all the citizens or all the property of such other state to its power.¹ The accidental circumstance that it may happen to have the means of reaching one and not the rest can make no difference; there must be an interest in the subject-matter of the tax; there must be between the state and the taxpayer a reciprocity of duty and obligation; and these in contemplation of law would be wholly wanting in the case supposed.² A territory, therefore,—or indeed a state,—has no authority to exercise the power to tax within the limits reserved to an Indian tribe.³ And it has been held in Missouri to be incompetent for the legislature to empower a city to tax for city purposes the land outside the city but adjacent to it, and therefore receiving, possibly, some of the benefits of the city government and expenditure.⁴ The benefits, it is obvious, would be altogether indirect and incidental, since the city could have no authority to make expenditures outside of its limits for the benefit of

¹ State Tax on Foreign-held Bonds, 15 Wall. 300; *Dewey v. Des Moines*, 173 U. S. 193, 204.

² State Tax on Foreign-held Bonds, 15 Wall. 300. See, also, *Murray v. Charleston*, 96 U. S. 432. Where a town had for more than twenty years exercised jurisdiction over part of another with its acquiescence, a tax levied within this part by such first mentioned town was nevertheless held void: *Ham v. Sawyer*, 38 Me. 37, 39. And see *Hughes's Lessee v. Horrel*, 2 Ohio 231. Whether, when it is doubtful in which of two counties a district lies,

it is not competent to provide for its taxation in either, see *People v. Wilkerson*, 1 Idaho (N. S.) 619.

³ See *ante*, p. 84 *et seq.*

⁴ *Wells v. Weston*, 22 Mo. 384, approved in *St. Charles v. Nolle*, 51 Mo. 122. A statute providing that taxes assessed upon any railroad in a town, city, or village shall be applied to the redemption of bonds issued by the municipality to aid the railroad, is not unconstitutional as imposing on the other towns of the county a tax for the benefit of the town through which the railroad runs. As to such other towns it is practi-

people there residing.¹ But in Indiana a statutory provision authorizing a town to tax all property within two hundred yards of the corporate limits was sustained, though not argued by either counsel or court;² and in Virginia, a railroad-aid law was held constitutional which extended the power of a city to tax lands for half a mile outside. These, however, may well be deemed doubtful cases.³ It is certainly difficult to understand how the taxation of a district can be defended whose people have no voice in voting it, in selecting the purposes, or in expending it. Where a license fee is levied for police purposes, there may be excellent reason for allowing a town specially interested in it to require its payment of any persons in or near the town itself; and as the purpose is one of general interest, the state would have a larger discretion in providing for it than it would possibly possess in the case of ordinary taxation.⁴

cally the same as if the railroad property was exempted from taxation: *Clark v. Sheldon*, 106 N. Y. 104.

¹See *Wilkey v. Pekin*, 19 Ill. 159; *Hundley v. Com'rs*, 67 Ill. 559. It is said in the case of *Com'rs of Highways v. Com'rs of East Lake Fork Drainage Dist.*, 127 Ill. 581, that the rule that money raised in one township cannot be expended in another has no application where assessments are made by the commissioners of a special drainage district against the highway commissioners of a township.

²*Conwell v. Connersville*, 8 Ind. 358.

³In *In re Flatbush*, 60 N. Y. 398, an assessment in Flatbush for a part of the cost of extending Prospect Park, which had previously been incurred by the city of Brooklyn, was held void for want of legislative power. Compare *Brooks v. Baltimore*, 48 Md. 265. In that case the mayor and council of Baltimore had been authorized to open streets and provide for ascertaining the damage or benefit thereby accruing to the owners of ground *within or adjacent*

to the city, for which such owners ought to be compensated or to pay compensation, and to provide for assessing and levying either generally upon the city or specially upon the persons benefited, the damages, etc. The court, dwelling upon the distinctions between a general tax and a special assessment upon the persons benefited, held that it made no difference whether the property lay upon one side or the other of the city line, if the reason for the exercise of the power was applicable; and further, that under the power to assess and levy, the council could sell the property for failure to pay an assessment. One cannot be assessed for a sewer which is to run in a district different from that wherein his property lies: *Chicago v. Adcock*, 168 Ill. 221. Road taxes levied in a district through which a railroad runs are not a lien on railroad property lying within the county but outside the district: *Wabash R. Co. v. People*, 137 Ill. 181.

⁴See *Falmouth v. Watson*, 5 Bush 661, in which license fees imposed by a town on those selling intoxicat-

It is provided by general law in some states that where a farm or plantation lies partly in two taxing districts, it may all be taxed in the one in which the mansion house is situate. Such a general rule varies the district to meet the particular case, and it has generally been sustained.¹

Where one municipality is set off from another, or where the bounds of an existing municipality are simply changed, so as to set off from it or bring within it persons and property, the case will commonly be one requiring legislation for an adjustment of rights in view of the changed condition of affairs. So

ing drinks outside its limits, but near it, were sustained as being imposed, partly at least, for police purposes. A town cannot give its ordinance such extraterritorial effect without express authority by statute: *Strauss v. Pontiac*, 40 Ill. 301. Water rents due and unpaid on premises beyond city limits are, under the statute, subject to city's lien equally as if on premises within the limits: *Pittsburgh v. Brace*, 158 Pa. St. 174.

¹*Saunders v. Springsteen*, 4 Wend. 429; *People v. Wilson*, 125 N. Y. 367; *Tebo v. Brooklyn*, 134 N. Y. 341; *People v. Gaylord*, 52 Hun 335; *Budd v. Allen*, 69 Hun 535; *Hairston v. Stinson*, 13 Ired. 479; *Ellis v. Hall*, 19 Pa. St. 292; *Bausman v. Lancaster*, 50 Pa. St. 208; *State v. Metz*, 29 N. J. L. 122; *State v. Hoffman*, 30 N. J. L. 346; *State v. Hay*, 31 N. J. L. 275; *State v. Britton*, 42 N. J. L. 103; *State v. Abbott*, 42 N. J. L. 111; *State v. Washer*, 51 N. J. L. 122; *Judkins v. Reed*, 48 Me. 386. A similar rule is to be observed in apportioning work on highways: *Hampton v. Hamsher*, 46 Hun, 144. If a farm lying in two townships is assessed in the one in which the owner does not reside, the assessment is without jurisdiction and the assessors are liable for making it: *Dorn v. Backer*, 61 N. Y. 261, reversing 61 Barb. 597. It is held in Pennsylvania that this mode of assessment cannot be claimed as a right

by the owner. And assessment of the separate parts in the counties, etc., in which they lie is not bad as to either for want of jurisdiction: *Patton v. Long*, 68 Pa. St. 260. As to the rule of assessment in Georgia, where a plantation lies on the line between two counties, see *Robson v. Du Bose*, 79 Ga. 721. In New Jersey, if land owned by a corporation is situated in two towns, it may be taxed in the town where the office is: *State v. Warford*, 37 N. J. L. 397. In New Hampshire it is said that real estate must be taxed in the town where it lies. Where, on a division of a town, it was provided that each tract through which the divisional line passed should be taxed where the owner lived, this was held not competent as a permanent provision, and long acquiescence did not estop from questioning it: *Weeks v. Gilmanton*, 60 N. H. 501. Where a water-power is created by a dam across a river which is the dividing line between two towns, it is taxable in each town to the extent of the value of the part situated therein, though it is used in only one of the towns: *Amoskeag Manuf. Co. v. Concord*, 66 N. H. 562. Towns cannot even by agreement establish the rule that each may tax lands of its residents lying in the other; there being no statute permitting it: *Dillingham v. Snow*, 5 Mass. 547.

long as the corporation retains its legal identity, it will be entitled to retain its property and be liable for its debts;¹ but unless some provision were made for compensations, there might be injustice which in some cases would be serious. It is customary, therefore, for the legislature to make provision for an apportionment of property and debts in such cases, so as to do justice, as nearly as possible, to the people of all the territory affected by the changes.² Should convenience seem to render it desirable, the existing debts might doubtless be provided for through a continued taxation for the purpose within the limits which were before liable.³

¹ See *North Hempstead v. Hempstead*, 2 Wend. 109, 135; *Hartford Bridge Co. v. East Hartford*, 16 Conn. 149, 171; *Windham v. Portland*, 4 Mass. 384-390; *Hampshire v. Franklin*, 16 Mass. 76, 85; *Medford v. Pratt*, 4 Pick. 222; *Montpelier v. East Montpelier*, 29 Vt. 12, 20; *Milwaukee Town v. Milwaukee*, 12 Wis. 93; *Olney v. Harvey*, 50 Ill. 453; *Wade v. Richmond*, 18 Grat. 583; *Milner v. Pensacola*, 2 Woods 632.

² *Harrison v. Bridgeton*, 16 Mass. 16; *Hampshire v. Franklin*, 16 Mass. 76; *Salem Turnpike v. Essex Co.*, 100 Mass. 282; *Whitney v. Stow*, 111 Mass. 368; *Stone v. Charlestown*, 114 Mass. 214; *Sedgwick v. Bunker*, 16 Kan. 498; *Bristol v. New Chester*, 3 N. H. 524; *Portwood v. Montgomery*, 52 Miss. 523; *Milwaukee Town v. Milwaukee*, 12 Wis. 93; *Marshall County Court v. Calloway County Court*, 2 Bush 93; *Layton v. New Orleans*, 12 La. An. 515; *School Dist. v. Board of Education*, 73 Mo. 627. That when territory is brought within the limits of an existing municipality it becomes liable to be taxed for the previous debts of the municipality, see *Olney v. Harvey*, 50 Ill. 453; *Watson v. Com'rs of Pamlico*, 82 N. C. 17; *Stilz v. Indianapolis*, 81 Ind. 582; *Lake Shore & M. S. R. Co. v. Smith*, 131 Ind. 512; *Smith v. Saginaw*, 81 Mich. 123; *Smith v. Willis* (Miss.), 28

South. Rep. 878; *Holder v. Bond* (Miss.), 29 *South. Rep.* 769; *Chicago, St. P., M. & O. R. Co. v. Cuming County*, 31 Neb. 374; *Powers v. County Com'rs*, 8 Ohio St. 285, 290; *Blanchard v. Bissell*, 11 Ohio St. 96; *Madry v. Cox*, 73 Tex. 538. Lands brought into a city after taxes have been levied on the property within the city are not subject to that levy: *Westport v. McGee*, 128 Mo. 552. Where the corporate limits of a town are changed after the ending of the tax year, but before the taxes have been collected, the collection of the same will not be enjoined: *New Decatur v. Nelson*, 102 Ala. 556. As to the effect of detaching territory from a municipality previously indebted, see *Galesburg v. Hawkinson*, 75 Ill. 152; *County Com'rs v. County Com'rs*, 42 Kan. 409. Where a new borough, though there was no decree authorizing it, paid by special tax its part of the old borough's debts, neither it nor its officers was or were liable to any action by the taxpayers: *Wade v. Oakmant*, 165 Pa. St. 479.

³ See *Galesburg v. Hawkinson*, 75 Ill. 152; *Rader v. Road Dist.*, 36 N. J. L. 273; *Alvis v. Whitney*, 43 Ind. 83; *Blount County v. Loudon County*, 8 Heisk. 854; *Linton v. Carter County*, 23 Fed. Rep. 535. See *Michigan Land, etc. Co. v. Republic T'p*, 65 Mich. 628. Where an act sets off one town from

To give locality to a purpose in respect to which a public expenditure is to be made, it is obviously not essential that the expenditure should be within the district, or that a public work created by means thereof should have its *situs* within the district. The district *interest* must be the true test whether an object is or is not a proper object of district taxation; and if the benefits are had by the district, the interest is manifest.¹ The case of city water-works located outside its limits is an illustration.²

another. it may provide that taxes to pay existing liabilities shall be assessed and collected in both by the existing officers as if the act had not been passed: *Winslow v. Morrill*, 47 Me. 411.

¹ *Ferris v. Vannier*, 6 Dak. 186.

² *Goddin v. Crump*, 8 Leigh 120, 155, per *Tucker*, President; *Denton v. Jackson*, 2 Johns. Ch. 317, 336. But in general, specific authority would be required to enable a municipality to expend money outside its territorial limits for a purpose which presumptively is not local. Thus, a town under its general authority to vote taxes for township purposes cannot raise money to build or repair a bridge outside: *Concord v. Boscawen*, 17 N. H. 465. Compare *North Hempstead v. Hempstead*, *Hopk. Ch.* 288; *Riley v. Rochester*, 9 N. Y. 64. But with proper legislative authority it may do this, on the ground of special local benefit: *Talbot County Com'rs v. County Com'rs of Queen Anne*, 50 Md. 245. See *Halsey v. Rumsey*, 84 Ill. 89; *Wright v. People*, 87 Ill. 582; *Concord v. Boscawen*, 17 N. H. 465. A city may be authorized

to purchase and improve a public park outside its limits: *M'Callie v. Chattanooga*, 3 Head 317; *Halsey v. People*, 84 Ill. 89. A village may make a special assessment for the construction of a sewer which lies partly outside of the corporate limits, where it is necessary to extend the sewer beyond such limits in order to obtain an outlet: *Shreve v. Cicero*, 129 Ill. 226; *Cochran v. Park Ridge*, 138 Ill. 235. Under the Kansas statute it was held that the cost of the construction of a discharging sewer situated wholly outside of a sewer district could not be assessed against the lots and pieces of ground in such district, although it was constructed and used for the sole purpose of a discharge for lateral sewers in such district: *Fort Scott v. Kaufman*, 44 Kan. 147. Lands outside of a town which are included in the town after the passage of an act providing for the levy of a tax on lands outside of the town for the construction of roads and for keeping the same in repair, are exempt from the tax for repairs: *Donnelly v. Carpenter* (Ky.), 47 S. W. Rep. 336.

CHAPTER VI.

EQUALITY AND UNIFORMITY IN TAXATION.

Requirement of equality. There is no imperative requirement that taxation shall be equal. If there were, the operations of government must come to a stop, from the absolute impossibility of fulfilling it. The most casual attention to the nature and operation of taxes will put this beyond question. No single tax can be apportioned so as to be exactly just, and any combination of taxes is likely in individual cases to increase instead of diminishing the inequality. Theoretically, tax laws should be framed with a view to apportioning the burdens of government so that each person enjoying government protection shall be required to contribute so much as is his reasonable proportion, and no more. The tax law that comes nearest to accomplishing this is, in theory, the most perfect.¹ But to accomplish this it may not be requisite to require the tax-gatherer to call upon every individual, and collect from him in person this reasonable proportion. It may possibly be found that the most equal and just tax can be collected from the fewest persons.² A tax on an article of prime necessity, which few produce but all use, may be collected of the producers alone without their feeling the burden beyond what others would feel it, because the tax, in the natural course of business, would be added to the price of the commodity, and would be collected by the producers from the whole community of consumers. Such a tax would be generally distributed, and would be wanting in equality only because of the fact that articles of prime necessity are not consumed by dif-

¹Wood v. Quimby, 20 R. I. 482. But in a general sense it is true that "no tax is legal which is not equally and impartially laid on the taxpayers:" Kerr v. Woolley, 3 Utah 456.

²Smith, *Wealth of Nations*, b. 5, ch. 2, pt. 2, art. 4. State taxes on

property by valuation are collected from very few persons—five to eight per cent. of the whole population. The indirect taxes levied by the federal government reach all or nearly all.

ferent members of the community in proportion to their means or income, and therefore the poorer classes would pay more than their just proportion. To collect all the revenues of government by a tax on breadstuffs exclusively would consequently be to compel unequal contributions to the support of the government, by means of the necessities of the poor. A tax on an article which is purely one of luxury would probably be more equal, and certainly less unjust, and would be diffused with some proportion to income; every man would tax himself, and would abstain or indulge as he felt the disposition and ability to pay. To collect the whole revenue of the state from an article of luxury like spirituous liquors, might, if it were practicable, be as little liable to objection as any other method; but to attempt the collection of all from one article would require a tax so heavy that it would be difficult of enforcement, and the purpose of the law would be defeated by diminishing the consumption as the price increased. We have already seen that other kinds of taxes are open to serious objections on the score of equality and justice. A tax on property by valuation, which seems perhaps most fair of all, is subject, as has been shown, to difficulties which preclude its being laid, apportioned, or collected with absolute justice. A statement of these difficulties need not be repeated here.

It being thus manifest that there are serious and often insurmountable difficulties in the way of equal and perfectly just taxation, it remains to be seen what is the rule of law where in the particular case the inequality can be pointed out and demonstrated. On this subject certain points have already been covered. The legislature must decide when and how and for what public purposes a tax shall be levied, and must select the subjects of taxation. All this is legislative, and the legislative conclusion in the premises must be accepted as proper and final. It follows that a tax cannot be attacked on averment and proof that some other tax for the same purpose would have been more just and more equal. An excise tax on one kind of business only is not illegal for the discrimination; it is always to be conclusively presumed that the legislature found good and controlling reasons impelling the action it has taken, and that, in view of all the circumstances which were known

to its members, the tax which has been provided for is reasonable.¹

Very strong language has been used by the courts in some cases, and a restatement of some of them in this place may illustrate some of the difficulties which are necessarily encountered in all attempts at equal taxation.

In the state of Pennsylvania a single borough was allowed to be specially taxed for the cost of a court-house to be erected within it for the county. This was a departure from the general rule, and the tax was resisted as an unequal burden as between the people of the borough and of the county. But the court had no difficulty in showing that no tax system which had ever existed in the state had resulted in equality. Some property was taxed twice; some escaped any taxation; the exigencies of the state required changes to reach new sources of revenue; but no one imagined that the inequalities had made the previous taxation unconstitutional. Equality of contribution had not been required by the bill of rights, and probably because it was known to be impracticable. And the court proceeds:

¹ See *De Camp v. Eveland*, 19 Barb. 81; *Northern Ind. R. Co. v. Connelly*, 10 Ohio St. 159, 165; *People v. Brooklyn*, 4 N. Y. 419; *Lusher v. Scites*, 4 W. Va. 11. In *Williams v. Cammack*, 27 Miss. 209, 224, *Handy, J.*, speaking of a special levee assessment, says: "Nor is it any objection to the constitutionality of the act that it operates injuriously upon the appellant. Every revenue bill, and every work of public improvement, must, more or less, have such an effect. But they must be submitted to as the necessary action of the machinery of government, and as individual sacrifices to the general good, in order that the advantages of the social compact may be enjoyed. This principle rests on the very foundations of society, and is illustrated in every day's experience; the citizen yielding his natural rights, even of life, liberty, or property, to the public good. But he can only claim immunity when it is secured to him by

the principles of the constitution." In *People v. Whyler*, 41 Cal. 351, 355, a levee tax was objected to as not equal, because not apportioned according to benefits. The court held that it was required to be apportioned by value, and *Rholes, Ch. J.*, says: "A tax is equal and uniform which reaches and bears with the like burden upon all the property within the given district, county, etc. It bears the like burden when the valuation of each parcel is ascertained in the same mode—the mode prescribed by law—and when it is subject to the same rate of taxation as other property within the district, county, etc. Absolute equality is unattainable, and the benefits derived or to be derived from the expenditure of the tax cannot be taken into account." See, for applications of the same principle, *Thomas v. Gay*, 169 U. S. 264; *New York, L. E. & W. R. Co. v. Com'rs*, 48 Ohio St. 249.

"If equality were practicable, in what branch of the government would power to enforce it reside? Not in the judiciary, unless it were competent to set aside a law free from collision with the constitution, because it seemed unjust. It could interpose only by overstepping the limits of its sphere, by arrogating to itself a power beyond its province; by producing intestine discord, and by setting an example which other organs of government might not be slow to follow. It is its peculiar duty to keep the first lines of the constitution clear, and not to stretch its power in order to correct legislative or executive abuses. Every branch of the government, the judiciary included, does injustice for which there is no remedy, because everything human is imperfect. The sum of the matter is, that the taxing power must be left to that part of the government which is to exercise it.

"But what if this power were so managed as to lay the public burthens on particular classes in ease of the rest? It is illogical to argue from an extreme case; or from the abuse of a power to a negation of it. Every authority, however indispensable, may be abused; and if it might not, it would be powerless for good."¹

"Perfect equality in the assessment of taxes," it is said in another case, "is unattainable. Approximation to it is all that can be had. Under any system of taxation, however wisely and carefully framed, a disproportionate share of the public burdens will be thrown on certain kinds of property, because they are visible and tangible, while others are of a nature to

¹ *Gibson*, Ch. J., in *Kirby v. Shaw*, 19 Pa. St. 258, 260. "Equality of taxation, as a maxim of taxation, means equality of sacrifice. It means appropriating the contributions of each person towards the expenses of government, so that he shall feel neither more nor less inconvenience from his share of the payment than every other person experiences from his. This standard, like other standards of perfection, cannot be completely realized." *Mill*, *Pol. Econ.*, b. 5, ch. 2. § 2. There is a very elaborate examination of this general subject in

Williams' Case, 3 Bland. Ch. 186, 220. A gas and lamp tax, required by law to be assessed "in equal proportions on all lots," is not so assessed when the same sum is assessed on each lot without discrimination throughout the municipality: *State v. Reimenschneider*, 39 N. J. 625. A statute requiring the taxation of any of a certain kind of property brought within the state after a certain specified date is void for want of uniformity: *Graham v. Chatauqua Co.*, 31 Kan. 473.

elude vigilance. It is only where statutes are passed which impose taxes on false and unjust principles, or operate to produce gross inequality, so that they cannot be deemed in any just sense proportional in their effect on those who are to bear the public charges that courts can interpose and arrest the course of legislation by declaring such enactments void.”¹

“Perfectly equal taxation,” it has again been said, “will remain an unattainable good as long as laws and government and man are imperfect.”² “There is no provision in the con-

¹ *Bigelow*, Ch. J., in *Commonwealth v. Savings Bank*, 5 Allen 428, 436. See *Lowell v. Oliver*, 8 Allen 247; *Ould v. Richmond*, 23 Grat. 464, 473; *Howell v. Bristol*, 8 Bush 493. “Taxes seldom bear equally upon all:” *State v. Travelers’ Ins. Co.*, 70 Conn. 590. “The requirement of equality and uniformity found in the constitution of some states is complied with when designed and manifest deviations from the rule are avoided:” *Stanley v. Albany County*, 121 U. S. 535. “Equality can never be but approximation:” *Redfield*, J., in *Allen v. Drew*, 44 Vt. 174, 186. See also as to the exclusiveness of legislative power in matters of taxation, *Athens v. Long*, 54 Ga. 330; *Tallman v. Treasurer*, 12 Iowa 531; *Dubuque v. Railway Co.*, 47 Iowa 196; *Beals v. Amador Co.*, 35 Cal. 624.

² *Sharswood*, J., in *Grim v. School Dist.*, 57 Pa. St. 433, 437. Compare *Durach’s Appeal*, 62 Pa. St. 491; *Shaw v. Dennis*, 5 Gilman 418; *People v. Worthington*, 21 Ill. 171; *Commonwealth v. N. E. Slate & Tile Co.*, 13 Allen 391; *Youngblood v. Sexton*, 32 Mich. 406; *Stanley v. Albany County*, 121 U. S. 535; *Norwood v. Baker*, 172 U. S. 269, 279; *First Nat. Bank v. Chapman*, 173 U. S. 205; *Henderson Bridge Co. v. Henderson*, 173 U. S. 592; *Board of County Com’rs v. Wilson*, 15 Colo. 90; *Hawkeye Ins. Co. v. French*, 109 Iowa 585; *Atchison, T. & S. F. R. Co. v. Clark*, 60 Kan. 826; *Russell v. Carlisle* (Ky.), 8 S. W. Rep.

14; *Walton v. Riley*, 85 Ky. 413; *Commonwealth v. Taylor*. 101 Ky. 325; *Northampton v. Hampshire County Com’rs*, 145 Mass. 108; *Steiner v. Sullivan*, 74 Minn. 498; *Herman v. Guttenberg*, 62 N. J. L. 695; *McCurdy v. Prugh*, 59 Ohio St. 465; *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266; *Cope’s Estate*, 191 Pa. St. 1; *Wood v. Quimby*, 20 R. I. 482; *Kelley v. Rhoades*, 7 Wyo. 137. In *Coburn v. Richardson*, 16 Mass. 213, 215, a tax on the lands of a non-resident for parish purposes was objected to. *Parker*, Ch. J.: “Numerous are the inconveniences and great is the injustice which may flow from this statute. But it is for the legislature alone to determine whether these are or are not counterbalanced by any great public good which may be expected to be produced by it.” In *Comer v. Folsom*, 13 Minn. 219, 222, in which a town bounty tax was contested, on the ground that it benefited in part another town, as in fact it did, *Wilson*, Ch. J., holds this language: “It is generally true that a city, town, or county, in expending money for the advancement of its own local interests, either directly or indirectly benefits some other subdivision of the state. If it builds a road or bridge, or aids in building a railroad, or in making any other public improvement, from which benefit to itself is expected to accrue, frequently some other subdivision of the state is directly and equally benefited; but it

stitution that taxation shall be equal. Sound policy requires that it should be, so far as possible. But perfect equality is not possible. Indeed, if this was necessary there could be no taxation except such as would include every person and every thing; which would be manifestly impracticable and unjust.”¹

“Perfect uniformity and perfect equality of taxation,” we are told in still another case, “in all the aspects in which the human mind can view it, is a baseless dream.”² These are strong expressions, but they do not go beyond the demands of strict accuracy.

But are there not cases which on their face are manifestly so unequal and unjust as to furnish conclusive evidence that equality has not been sought for, but avoided; that oppression, not justice, was desired, and confiscation, not taxation, intended? Such cases it surely is possible to conceive, and if such has never been the intent of legislation, it is certain that it has sometimes been the result.

It has already been stated that inequality does not necessarily follow the restricting of a tax to a few subjects only, or even to a single subject. Such a restricted tax might, on the other hand, under some circumstances, be as equal and just as any that could be laid. A tax laid exclusively on merchants’

has not been considered that this would be a legal objection to an appropriation or tax for such improvement. If our constitution required absolute or perfect equality in taxation, such objection would perhaps have to be admitted. But perfect equality is not required, nor is it possible. All taxes ‘should be as nearly equal as may be.’ in the language of the constitution. If the taxes imposed are distributed on just principles applicable alike to all for whose benefit the appropriation is made or intended, substantial equality is attained, and no constitutional right invaded.” Compare *People v. Whyler*, 41 Cal. 351, 354. Perfect equality in a special assessment is hardly attainable, and approximation is all that can reasonably be expected: *Ladd v. Gambell*, 35 Or.

393. It is competent to impose a tax on a particular business — liquor selling — to provide and maintain an asylum for inebriates: *State v. Cassidy*, 22 Minn. 312; *State v. Klein*, 22 Minn. 328.

¹*Sharswood, J.*, in *Weber v. Reinhardt*, 73 Pa. St. 370, 373. See *Loan Association v. Topeka*, 20 Wall. 655, per *Miller, J.*; *State Railroad Tax Cases*, 92 U. S. 575; *National Bank v. Kimball*, 103 U. S. 732; *Opinions of Justices*, 58 M. E. 590; *Savings Bank v. New London*, 20 Conn. 117; *Carrington v. Farmington*, 21 Conn. 65; *Coite v. Society for Savings*, 32 Conn. 173; *State v. Township Committee*, 36 N. J. 66; *Am. Union Exp. Co. v. St. Joseph*, 66 Mo. 675; *Apperson v. Memphis*, 2 Flip. 363.

²*Head Money Cases*, 112 U. S. 580.

goods might not be burdensome to those who, in the first instance, paid it, since the effect would only be to increase the price to the consumer, and thus to diffuse the burden through the whole community. A license tax might not be unjust though laid upon a single occupation, provided that it was so laid that none who followed that occupation escaped it.¹ Let it reach all of a class, either of persons or things, it matters not whether those included in it be one or many, or whether they reside in any particular locality or are scattered all over the state. But when, for any reason, it becomes discriminative between individuals of the class taxed, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible.² It is immaterial on what ground the selection is made: whether it be because of residence in a particular portion of the taxing district,³ or because the persons selected have been remiss in meeting a former tax for the same purpose,⁴ or because of any other reason, plausible or otherwise; for if the principle of selection be once admitted, limits cannot be set to it, and it may be made use of for the purposes of oppression, or even of punishment.⁵ It might also be made use of to give special privileges in the nature of monopolies; as if loans of money were in general taxed, but those made by named persons, or by residents of a named locality, were exempted; in which

¹ See *State v. Willingham* (Wyo.), 62 Pac. Rep. 797.

² "Absolute equality in taxation is, of course, unattainable; but a law the manifest purpose and legitimate result of which is discrimination and inequality cannot be enforced:" *Atchison, T. & S. F. R. Co. v. Clark*, 60 Kan. 826.

³ *St. Louis v. Spiegel*, 75 Mo. 145.

⁴ *State v. Township Committee*, 36 N. J. L. 66. The parties in this case, who were specially taxed \$1,000, had failed to pay \$200 before assessed against them, for the same purpose. Had the \$200 been reassessed against them, the reassessment could not have been complained of. It was decided in *Nashville v. Althorp*, 5

Cold, 554, that where a merchant's privilege is taxed, discriminations cannot be made; *e. g.*, between those living within and those without a city: Compare *Robinson v. Charleston*, 2 Rich. 317; *Fields v. Commissioners*, 36 Ohio St. 476. An ordinance is void in so far as it discriminates against non-resident merchants in favor of residents, by requiring the former to pay a license fee to deliver goods, etc.: *Muhlenbrinck v. Com'rs*, 42 N. J. L. 365; *Thompson v. Ocean Camp Grove, etc. Assoc.*, 55 N. J. L. 507; *Morgan v. Orange*, 50 N. J. L. 389.

⁵ *Kansas City v. Whipple*, 136 Mo. 475; *State v. Hoyt*, 71 Vt. 59.

case the injustice would be so manifest that none could defend it.¹ Even within the class taxed, however, there may be rules of distinction; and these are perfectly admissible, provided they are general rules and are observed.² If a state, for example, were to decide to levy an occupation tax upon one of the learned professions, it might decide to lay the same tax upon each member, or it might discriminate so that the tax should be proportioned to the professional income. Either course would be admissible, provided the rule were made general,³ though the latter may be the more equitable.⁴ But questions of mere equity in taxation are for the legislature, not for the courts.⁵

¹ See *Lin Sing v. Washburn*, 20 Cal. 53, a case of exceptional taxation of persons of one race. For the general rule, see *Durach's Appeal*, 62 Pa. St. 491; *Fletcher v. Oliver*, 25 Ark. 289; *State v. Parker*, 32 N. J. L. 426; *Youngblood v. Sexton*, 32 Mich. 406; *Ex parte Marshall*, 64 Ala. 266; *New Orleans v. Dubarry*, 33 La. An. 431. In some cases the selection of subjects for taxation has been treated as inadmissible on the principle stated in the text; as in *Franklin Ins. Co. v. State*, 5 W. Va. 349, in which a tax of three per cent. on the premiums of insurance companies was held void, the constitution requiring taxation to be equal and uniform and this tax law applying to no other class of subjects or corporations, or to individuals. The tax seems to have been regarded as a tax on *property*. Surely the requirement of uniformity cannot make it essential that all persons or subjects shall be taxed, nor that all corporations shall be taxed alike. Does it mean any more than that any particular tax shall be laid equally and uniformly upon the persons or subjects within the class taxed? Would not a tax of one per cent. on the net earnings of all railroad companies be equal and uniform? And if this is inadmissible, how can there be

any equalization of taxation, as between, for instance, the insurance company and the saloon-keeper, unless everything is brought to the standard of a property tax, in which case those who ought to pay most would sometimes pay least? See *Slaughter v. Commonwealth*, 13 Grat. 767; *Carter v. Dow*, 16 Wis. 298; *State v. Willingham (Wyo.)*, 62 Pac. Rep. 897. In *State v. Charleston*, 12 Rich. 702, 732, *Dunkin*, Chancellor, says: "Essential characteristics of any system of taxation, properly so called, are certainty, equality, universality. All the persons or property within a state, district, city, or other fraction of territory having a local sovereignty for the purpose of taxation, should, as a general rule, constitute the basis for taxation." Like language is made use of by *Tuck, J.*, in *O'Neal v. Bridge Co.*, 18 Md. 1, 23, and it is quite true and just where taxation by values is what the law provides for; but it has but limited application to the taxation of business in any form.

² *St. Louis v. Bowler*, 94 Mo. 634; *Aurora v. McGannon*, 138 Mo. 38.

³ *Ould v. Richmond*, 23 Grat. 464; *St. Louis v. Steinberg*, 69 Mo. 289.

⁴ *Aurora v. McGannon*, 138 Mo. 38.

⁵ The legislature, while acting within the sphere of its authority to

Exemptions. Every statute for the levy of taxes is in a sense a statute making exemptions; that is to say, it leaves many things untaxed which it would be entirely competent to tax if the legislature had deemed it wise or politic. One state will lay the burden on property only, another on property and corporations, another on property and the different kinds of business, and so on. In each case there is such selection of subjects as the legislative wisdom has determined upon, and the determination is conclusive. All subjects for which taxation is not provided are exempted, and the subjects selected are alone, for the time, taxable.¹

When, however, the selections have been made, and the general rule determined upon, it has been customary for the legislature to make certain exemptions of either persons or property coming within the general rule, but which, for reasons of general policy, it is deemed wise not to tax. Some of these, such as the exemptions of household furniture, tools of trade, etc.,

tax, is the sole judge of the wisdom and justice of the measure it may adopt, exact justice in matters of taxation being practically unattainable in any event: *New York, L. E. & W. R. Co. v. Com'rs*, 48 Ohio St. 249. A remarkable case of invidious exemption occurs in the legislation of Arkansas for 1871. A statute purporting to be passed in the interest of immigration and manufactures exempted every species of manufacture and mining, but excluded from its benefits all whose monthly production did not reach a sum named, thus discriminating against small capitalists.

¹ See *City Council v. St. Phillip's Church*, 1 McMul. Eq. 139, 144; *Martin v. Charleston*, 13 Rich. Eq. 50, 52; *Levy v. Smith*, 4 Fla. 154; *Brewer County v. Brewer*, 62 Me. 62; *Butler's Appeal*, 73 Pa. St. 448; *State v. County Court*, 19 Ark. 360; *State v. Alston*, 94 Tenn. 674. Exemption means free from liability, from duty, from service. It is a grace, a favor, an immunity; taken out from under the

general rule; not to be like others who are not exempt; to receive, and not make a return. *Bartholemew v. Austin*, 87 Fed. Rep. 359, 29 C. C. A. 568. The word "exempt," as used in a statute relating to appeals from the decision of the board of review, applies to property which is not subject to taxation because having no *situs*, actual or constructive, within the state; and it is not merely a description of property which has been removed from the operation of the general laws providing for taxation of all property in the state: *Dutton v. Board of Review*, 188 Ill. 386; *Maxwell v. People*, 189 Ill. 546. Under the Vermont statute allowing deductions from taxable property on account of indebtedness, it was held that the phrase "exempt from taxation by the laws of this state" meant "declared by the laws of this state to be exempt from taxation," and not "exempt from the operation of the tax-laws of this state:" *Smalley v. Burlington*, 63 Vt. 443.

and the limited personal property which very poor persons may be possessed of, are to be looked upon rather as in the nature of limitations of the general rule, than as exceptions from it; the taxation being only of all that is possessed over and beyond what has been left out as absolutely needful to the owner's support.¹ Property made use of for educational purposes though in the hands of private individuals, the property of charitable associations, of cemetery companies, and the like, are excluded from tax rolls for similar reasons; these being supported by contributions collected alike from rich and poor, and having strong claims to public encouragement.

Implied exemptions. Before noticing the exemptions expressly made by law, it will be convenient to speak of some which rest upon implication. Some things are always presumptively exempted from the operation of general tax laws, because it is reasonable to suppose they were not within the intent of the legislature in adopting them. Such is the case with property belonging to the state and its municipalities, and which is held by them for governmental purposes. All such property is taxable, if the state shall see fit to tax it;² but to levy a tax upon it would render necessary new taxes to meet the demand of this tax, and thus the public would be taxing itself in order to raise money to pay over to itself, and no one would be benefited but the officers employed, whose compensation would go to increase the useless levy.³ It cannot be supposed that the legislature would ever purposely lay such a burden upon public property, and it is therefore a reasonable conclusion that, however general may be the enumeration of

¹ *Cobb v. Com'rs.* 122 N. C. 307.

² *Louisville v. Commonwealth*, 1 Duv. 295; *Wayland v. Com'rs.* 4 Gray 500; *Durkee v. Com'rs.* 29 Kan. 697; *Trustees v. Trenton*, 30 N. J. Eq. 667; *Chancellor v. Elizabeth* (N. J.), 47 Atl. Rep. 454; *State v. Recorder*, 45 La. An. 566. Prior to the revision, in 1896, of the tax-laws of New York, cities in that state to which bequests had been made were chargeable with the transfer tax: *In re Hamilton*, 148 N. Y. 310. But now a legacy bequeathed to a city for the con-

struction of a public building is exempt from such tax: *In re Thrall's Estate*, 157 N. Y. 46. While it is competent for the law-making power to include public property belonging to a city or county within the limits of special assessments for public improvements, yet such property is not so included unless by express enactment or clear implication: *Clinton v. Henry County*, 115 Mo. 557; *St. Louis v. Brown*, 155 Mo. 545.

³ *Directors of the Poor v. School Directors*, 42 Pa. St. 21, 25.

property for taxation, the property held by the state and by all its municipalities for governmental purposes was intended to be excluded, and the law will be administered as excluding it in fact.¹ Lands belonging to the state are not, therefore, to be entered for taxation, and if they are sold for taxes the sales are void and pass no title to the purchasers.² And the grant

¹ *School Dist. v. Board of Improvement*, 65 Ark. 343; *People v. Doe*, 36 Cal. 220; *Low v. Lewis*, 46 Cal. 550; *People v. Austin*, 47 Cal. 353; *West Hartford v. Water Com'rs*, 44 Conn. 360; *Dispensary Com'rs v. Thornton*, 106 Ga. 106; *State v. Stevenson* (Idaho), 55 Pac. Rep. 886; *People v. Salomon*, 51 Ill. 37; *Industrial University v. Champaign County*, 76 Ill. 283; *Gibson v. Howe*, 37 Iowa 168; *Moore v. Morledge*, 42 Iowa 26; *Callanan v. Wayne County*, 73 Iowa 709; *Louisville v. Commonwealth*, 1 Duv. (Ky.) 295; *Louisville v. Nevin*, 10 Bush 549; *Owensboro v. Commonwealth* (Ky.), 49 S. W. 320; *Alexandria v. O'Shee*, 51 La. An. 719; *Gachet v. New Orleans*, 52 La. An. 813; *Camden v. Camden Village Corp.*, 77 Me. 530; *Inhabitants v. Com'rs*, 4 Gray. 500; *Worcester County v. Worcester*, 116 Mass. 193; *Somerville v. Waltham*, 170 Mass. 160; *Big Rapids v. Mecosta Supervisors*, 99 Mich. 351, 353; *Meridan v. Phillips*, 65 Miss. 362; *Warren County v. Nall* (Miss.), 29 South. Rep. 755; *St. Louis v. Gorman*, 29 Mo. 593; *Moore v. Woodruff*, 146 Mo. 597; *Grafton County v. Haverhill*, 68 N. H. 120; *State v. Gaffney*, 34 N. J. L. 133; *State v. Clinton T'p*, 49 N. J. L. 313; *State v. Collins*, 60 N. J. L. 367; *Inhabitants v. Conover*, 63 N. J. L. 191; *Rochester v. Rush*, 80 N. Y. 302; *People v. Assessors*, 111 N. Y. 505; *State v. Griftner*, 61 Ohio St. 201; *Directors of Poor v. School Directors*, 42 Pa. St. 21; *Erie County v. Erie*, 113 Pa. St. 260; *Columbia v. Tindal*, 43 S. C. 547; *Galveston Wharf Co. v. Galves-*

ton, 63 Tex. 14; *Springwells v. Johnson*, 10 Utah 351; *Black v. Sherwood*, 84 Va. 906. See *Magruder v. Augusta*, 86 Ga. 220; *King v. Com'rs*, etc., 4 T. R. 730; *King v. Inhab. of Liverpool*, 7 B. & C. 61; *King v. Terrott*, 3 East 506; *Queen v. Shee*, 4 Q. B. 2; *Queen v. Axminster*, 12 A. & E. 2. Where property is dedicated to public use it cannot be assessed and sold for taxes: *Alexandria v. O'Shee*, 51 La. An. 719. A tax judgment for taxes assessed on part of a public street is void for want of jurisdiction: *Smith v. St. Paul*, 72 Minn. 472. Cotton grown within a levee district on lands leased by the state is not taxable, such product being the property of the state: *State v. Levee Com'rs*, 75 Miss. 132. Where, before state taxes assessed thereupon became due, certain ground passed into the city's hands, liability to tax was arrested: *Gachet v. New Orleans*, 52 La. An. 813.

² *Braxton v. Rich*, 47 Fed. Rep. 178; *State v. Stevenson* (Idaho), 55 Pac. 886; *McCarlin v. State*, 99 Ind. 478; *Moore v. Woodruff*, 146 Mo. 597; *State v. Griftner*, 61 Ohio St. 201. This is so even though the lands had come to the state by escheat, and though the fact of escheat was not known when the tax was imposed: *Reid v. State*, 74 Ind. 252. Where land is held by the state it cannot be sold for taxes due the levee board, and lapse of time will not validate a deed made in pursuance of such an attempted sale: *Rich v. Baskett*, 68 Miss. 250. See *Woodruff v. State*, 77 Miss. 68. Since the title to all parts of a navi-

in general terms to a city of the power to tax will not be held to confer power to tax state or county property;¹ and the rule applies to the property of public educational and charitable institutions which perform public functions under state control,² and to any other corporation or agency of which the state is substantially the corporator or principal, and which exists for governmental purposes.³ It is also held upon the same grounds

gable lake is in the state, land covered by part of such a lake is not subject to taxation, and an attempted sale thereof passes no rights: *Mendota Club v. Anderson*, 101 Wis. 479. Land under tide-water below high-water mark is not liable to assessment for taxes, being the property of the state: *Winants v. Jersey City*, 42 N. J. L. 349; *Colket v. Rightmire*, 46 N. J. L. 341; *Bear v. Com'rs of Taxes* (N. J.), 43 Atl. Rep. 538. It is held in Arkansas that until delivery of patent and payment of prices school lands are not subject to taxation: *Witt v. Armstrong* (Ark.), 6 S. W. Rep. 225. See *Menger v. Board of Com'rs*, 48 Kan. 553. The leasehold interest of a tenant of school lands belonging to the state is subject to taxation: *State v. Tucker*, 38 Neb. 56. Where land in the sixteenth section has been leased by the state for a term renewable forever, at the lessee's option, the land is subject to taxation: *Street v. Columbus*, 75 Miss. 822. By statute in Louisiana where property acquired by the state for non-payment of taxes is sold, the purchaser from the state and his vendee are liable for the taxes for all the years it was held by the state: *Gulf States Land, etc. Co. v. Parker*, 72 Fed. Rep. 339.

¹ *Piper v. Singer*, 4 S. & R. 354; *People v. McCreery*, 34 Cal. 432, 456; *People v. Doe*, 36 Cal. 220; *People v. Austin*, 47 Cal. 353; *Reid v. State*, 74 Ind. 252; *Townsen v. Wilson*, 9 Pa. St. 270; *Nashville v. Bank of Tennessee*, 1 Swan 269. See *Trustees v. Taylor*, 30 N. J. Eq. 618; *Trustees v. Trenton*, 30

N. J. Eq. 667; *Jersey City v. Foster*, 32 N. J. Eq. 825; *Trustees v. Shotwell*, 45 N. J. Eq. 106; *Rahway v. Com'rs* (N. J.), 18 Atl. Rep. 56; *Chancellor v. Van Hovenburg* (N. J. Eq.), 45 Atl. Rep. 439.

² *Trustees v. City Council*, 90 Ga. 634; *Trustees v. Champaign County*, 76 Ill. 184; *Board of Regents v. Hamilton*, 28 Kan. 376; *Tulane Education Fund v. New Orleans Assessors*, 38 La. An. 292; *Auditor-General v. Regents*, 83 Mich. 467; *State v. Hamlin Univ.*, 46 Minn. 316; *Trustees v. Trenton*, 30 N. J. Eq. 667; *Newark v. Inhab. of Verona T'p*, 58 N. J. L. 595. See *Louisville v. McNaughton* (Ky.), 44 S. W. Rep. 380.

³ *Nashville v. Bank of Tennessee*, 1 Swan 269. This case holds that a state bank chartered for the benefit of the state, and with the faith and credit of the state pledged for its support, is not taxable by a municipality. In the absence of express statute the business of dealing in liquors through the medium of the public dispensary is not subject to taxation. The dispensary commissioners are public officials, not liquor dealers: *Dispensary Com'rs v. Thornton*, 106 Ga. 106. Such commissioners were held afterwards to be county authorities within the general tax act imposing a tax on dispensaries conducted by counties or municipal authorities: *Sheffield v. Board of Com'rs*, 111 Ga. 1. A corporation authorized by its charter to improve a river for the running of logs, and to superintend all general drives of logs

that preclude general taxation that a city or village cannot, without statutory permission, subject state, county, or school district property to assessment for local improvements.¹

Where a municipality holds property not for governmental purposes, but for the mere convenience of its people, or to supply some need such as water or light, which is commonly supplied by a private corporation, the presumption of an intention to exclude such property from taxation would be very slight, and perhaps could not arise at all on the language of the law.²

and charge tolls therefor, was held to be a *quasi*-public corporation, the dams of which, erected for the purposes of its incorporation, and valuable only in connection with its franchise, were not taxable as realty: *Yellow River Imp. Co. v. Wood County*, 81 Wis. 554.

¹ *Mt. Vernon v. People*, 147 Ill. 359; *Polk County Savings Bank v. State*, 69 Iowa 24; *Louisville v. Leatherman*, 99 Ky. 213; *Baltimore County Com'rs v. Maryland Insane Hospital*, 62 Md. 127; *Big Rapids v. Mecosta Supervisors*, 99 Mich. 351; *Clinton v. Henry County*, 115 Mo. 557; *Steen v. Beatrice*, 36 Neb. 421; *Toledo v. Board of Education*, 48 Ohio St. 83; *Harris County v. Boyd*, 70 Tex. 237. See *St. Louis v. Brown*, 155 Mo. 545. Land belonging to school districts is liable to assessment for street improvement only when not used for school purposes: *Witter v. Mission School Dist.*, 121 Cal. 350. The property of a school of reform, which is practically one of the agents of the state, is not subject to assessment for street improvements, as one government agency cannot be required to pay for the support of another: *Louisville v. McNaughton* (Ky.), 44 S. W. Rep. 380. The fact that such an institution is largely supported by the city wherein it is located is also sufficient to exempt its property from special assessments by the city: *Ibid.* Special assessments for public improvements cannot be laid upon a railroad com-

pany's right of way, for the reason that such right of way is property appropriated to public uses which should not be made to share the burden of paying public expenses: *Boston v. Boston & A. R. Co.*, 170 Mass. 95. That land dedicated by the legislature to the perpetual use of the public as a burial ground, and exempted from all public taxes, cannot be assessed for a sewer from which it derives no benefit, see *Proprietors v. Board*, 150 Mass. 12.

² *Louisville v. Commonwealth*, 1 Duv. 295. See *West Hartford v. Water Com'rs*, 44 Conn. 360; *State v. Board of Assessors*, 35 La. An. 668; *Brodie v. Fitzgerald*, 57 Ark. 445; *School Dist. v. Howe*, 62 Ark. 481; *School Dist. v. Board of Improvement*, 65 Ark. 343; *San Diego v. Linda Vista Irrig. Dist.*, 108 Cal. 189; *Commonwealth v. Makibben*, 90 Ky. 384; *Covington v. Commonwealth* (Ky.), 39 S. W. Rep. 836; *Commonwealth v. Louisville* (Ky.), 47 S. W. Rep. 865; *Newport v. Commonwealth* (Ky.), 50 S. W. Rep. 845; *Negley v. Henderson* (Ky.), 55 S. W. Rep. 554, 59 S. W. Rep. 19; *Inhabitants of Essex v. Board of Assessors*, 153 Mass. 141; *Newport v. Unity*, 68 N. H. 587; *Erie County v. Erie Water Works Com'rs*, 113 Pa. St. 368. Property held by a city under a contract giving it an option to purchase, but creating no obligation to purchase, is not exempt from taxation: *Milwaukee v. Milwaukee*, 95 Wis. 424. If a

Such property is deemed, as is said in one case, to be held by the corporation in its social or commercial capacity as a private corporation, and for its own profit; and therefore it was considered that vacant lots owned by a city, market-houses, fire-engines, etc., were not presumptively excluded from taxation;¹ but this, unless confined to the case of special assessments, would seem to be limiting the implied exemption unreasonably, and certainly more than other cases limit it.²

city purchases a farm situated in another municipality, although for the purpose of obtaining a place for burying its poor, and uses the bulk of the premises for farming purposes, to derive pecuniary profit therefrom, only such reasonable quantity as is used for the burial of the dead will be exempt; *State v. Clinton T'p*, 49 N. J. L. 313. A municipal corporation cannot hold private property — *e. g.*, a park — in trust for the owners of lots fronting on it so as to exempt it from taxes and assessments under general laws: *McChesney v. People*, 99 Ill. 216; see *St. Louis v. Wenneker*, 145 Mo. 230. Property devised to trustees in trust for a town, with the provision that the rents and profits be applied to maintaining a public park, held subject to taxation: *Mitchellville v. Supervisors*, 64 Iowa 554. Under a constitutional provision exempting the property of municipal corporations, property devised to a city in trust for charitable purposes is not exempt: *St. Louis v. Wenneker*, 145 Mo. 230. In New York the rule which formerly prevailed in that state has been changed by statute, and property, such as a water-works system, held by a municipality for public use, but located beyond the boundaries of such municipality, is taxable: *People v. Hess*, 157 N. Y. 42. A company formed under the statutes of New York for the purpose of supplying a village with water is not a governmental agency the property of which is

exempt from taxation: *People v. Forrest*, 97 N. Y. 97. See *Athens City Water Works Co. v. Athens*, 74 Ga. 413; *Appeal of Des Moines, etc. Co.*, 48 Iowa 324; *Louisville Water Co. v. Hamilton*, 81 Ky. 517; *Dover v. Maine Water Co.*, 90 Me. 180; *Roaring Creek Water Co. v. Girtton*, 142 Pa. St. 92.

¹ *Louisville v. Commonwealth*, 1 Duv. 295; *Covington v. Commonwealth (Ky.)*, 39 S. W. Rep. 836. Compare *Appeal of Des Moines, etc. Co.*, 48 Iowa 324; *Negley v. Henderson (Ky.)*, 55 S. W. Rep. 554.

² The following public property has been held not taxable: A city hall, *Louisville v. Commonwealth*, 1 Duv. 295; *Columbia v. Tindal*, 43 S. C. 547. A town hall, though let for hire when not used for corporate purposes: *Camden v. Camden Village Corp.*, 77 Me. 530. Court-house and jail, *Worcester County v. Worcester*, 116 Mass. 193; *Big Rapids v. Mecosta Supervisors*, 99 Mich. 351; *Grafton County v. Haverhill*, 68 N. H. 120. Fire-engine house, *Erie County v. Erie*, 113 Pa. St. 360. Park or common, *St. Louis v. Gorman*, 29 Mo. 593; *Henderson v. Hughes County*, 13 S. D. 576. Gas wells, pipe lines, pumping stations, and machinery of public gas plant: *Toledo v. Hosler*, 54 Ohio St. 418. Water-works, reservoirs, etc., *West Hartford v. Water Com'rs*, 44 Conn. 360; *State v. Gaffney*, 34 N. J. L. 131; *Rochester v. Rush*, 80 N. Y. 302; *Clarksville v. Montgomery County (Tenn. Ch. App.)*, 62 S. W. Rep. 33; *Nashville v.*

The presumption that public property is not intended to be taxed ceases when it has been sold, even though the title has

Smith, 86 Tenn. 213. City water board's property temporarily leased to dry dock company, *Detroit Water Com'rs v. Auditor-General*, 115 Mich. 546. Cemetery, *People v. Doe*, 36 Cal. 220; *Louisville v. Nevin*, 10 Bush 549. Poor house, *Directors of Poor v. School Directors*, 42 Pa. St. 21. Land acquired and used by city for obtaining gravel to construct streets: *Somerville v. Waltham*, 170 Mass. 160. A city slip, *Low v. Lewis*, 46 Cal. 550. Ferry landing, *People v. Assessors*, 111 N. Y. 505; *Black v. Sherwood*, 84 Va. 906. Wharf company's stock owned by city, *Galveston Wharf Co. v. Galveston*, 63 Tex. 14. School fund property, 80 Ill. 384; *Louisville v. Leatherman*, 99 Ky. 213. County farms were held taxable where the statute expressly exempted "alms-houses on county farms," thus by necessary implication leaving the farms subject: *Grafton County v. Haverhill*, 68 N. H. 120. Lands owned by a municipal corporation, and leased for more than fourteen years, without subjection to revaluation, were held taxable only to the extent of the lessee's interest therein: *Zumstein v. Consolidated Coal & M. Co.*, 54 Ohio St. 264. Under the Illinois constitution of 1870, providing that the property of counties and other municipal corporations may be exempted from taxation, but only by general law, such property is subject to taxation, unless exempted by statute: *Cook County v. Chicago*, 103 Ill. 646; *People v. Moline*, 123 Ill. 267; *People v. Chicago*, 124 Ill. 536. Lands belonging to a sanitary district are not exempt from taxation under a statute exempting "all market houses, public squares, or other public grounds, used exclusively for public purposes," nor under a statute exempting all property of the state:

Sanitary Dist. v. Martin, 173 Ill. 243. City warrants for the repayment of moneys advanced are not within a constitutional provision exempting from taxation municipal property, but are taxable as choses in action: *Easton v. Board of Review*, 183 Ill. 355. Under a statute directing the assessment and taxation of all real estate not exempt, property held by the city as trustee may be assessed the same as other property: *St. Louis v. Wenneker*, 145 Mo. 230. Under a constitutional provision that "public property used for public purposes" shall be exempt from taxation, the property of a city used in connection with its fire department, and also public parks of the city, are exempt from taxation by the state: *Owensboro v. Commonwealth (Ky.)*, 49 S. W. Rep. 320. The express limitation in New Jersey of property of municipal corporations was held not to be limited to property used for public purposes: *Newark v. Inhab. of Belleville*, 61 N. J. L. 455. Though property of a school district actually used for school purposes is exempt from taxation, land owned by such district but not so used is liable to assessment for local improvement: *School Dist. v. Board of Imp.*, 65 Ark. 343. Under the Iowa statutes a school-site cannot be sold for taxes: *Independent School Dist. v. Hewitt*, 105 Iowa 663. Market building erected by private corporation upon public square under contract with city, held liable to taxation: *Alleghany County v. McKeesport Diamond Market*, 123 Pa. St. 164. See *State v. Cooley*, 62 Minn. 183. So with bridge erected upon piers owned by county but rented to private person: *Luttrell v. Knox County*, 89 Tenn. 253. The federal supreme court follows the construction put by the highest court

not yet been passed; and the purchaser's interest is commonly taxed, the public interest being protected by legislation.¹

Property in the hands of a receiver of a court for the purposes of a suit pending in such court is not exempt from the operation of the tax laws of the government within the jurisdiction of which such property is situated.²

Allowance for debts. Revenue laws sometimes permit taxpayers to deduct from the property to be taxed the debts³

of the state upon the state's statutes relating to exemptions of property used "for public purposes:" *Covington v. Kentucky*, 173 U. S. 231.

¹ State lands, sold partly on credit, are taxable as the purchaser's property from the time of sale: *Courtney v. Missoula County*, 21 Mont. 591. See *State v. Tucker*, 38 Neb. 56; *Washington Iron Works v. King County*, 20 Wash. 150. Land set apart by a state for the contractor as payment for the construction of its new capitol, to be conveyed to the contractor from time to time in the progress of the work, is not subject to taxation under the statute as land "held under a contract for the purchase thereof, belonging to this state:" *Taylor v. Robinson*, 72 Tex. 364. *Contra*, *Taylor v. Robinson*, 34 Fed. Rep. 678. Nor did a lease executed after the original contract, under which the contractor took possession at a stipulated rent of all the land so set apart, until the title should vest in him by the completion of the building, give him such a holding as to make the land taxable: *Taylor v. Robinson*, 72 Tex. 364. Internal-improvement fund lands cease to be public lands and become liable to taxation as private property upon entry at the proper office with evidence thereof: *Mundee v. Freeman*, 23 Fla. 529. Under the Wisconsin statute providing that where entries of land have been suspended such lands should not be subject to taxation until such suspension was removed, the filing of a certificate of

suspension was a condition precedent to the owner's right to claim the benefit of exemption: *Farnham v. Sherry*, 71 Wis. 568. When lands granted by state in aid of railroad become taxable: *Winona & St. P. L. Co. v. Minnesota*, 159 U. S. 526; *Myers v. Northern Pac. R. Co.*, 83 Fed. Rep. 358; *Chippewa County v. St. Paul, S. & T. F. R. Co.*, 42 Minn. 295, 301; *Sioux City & St. P. R. Co. v. Robinson*, 41 Minn. 452; *Winona & St. P. R. Co. v. Deuel*, 3 Dak. 1. Where, in pursuance of a statute, lands had been set apart and conveyed absolutely to a private corporation, which improved them for its own benefit, the proceeds of such parts of them as were sold by the corporation were taxable as its property: *Cannon River Manuf. Assoc. v. Rice County*, 32 Minn. 516. Statute held not to have subjected to taxation undeeded town-site lots in government town-sites, pending contests, but only improvements thereon: *Topeka, etc. Co. v. McPherson*, 7 Okl. 332.

² *Stevens v. New York & O. M. R. Co.*, 13 Blatchf. 104; *George v. St. Louis C. & W. R. Co.*, 44 Fed. Rep. 117; *Walters v. Western & A. R. Co.*, 68 Fed. Rep. 1002; *Wiswall v. Kunz*, 173 Ill. 110; *Schmidt v. Failey*, 148 Ind. 150; *Spalding v. Commonwealth*, 88 Ky. 135; *Youtsey v. Commonwealth (Ky.)*, 62 S. W. Rep. 262; *State v. Railroad Com'rs*, 41 N. J. L. 235.

³ One entitled to a reduction on account of "*bona fide* and uncondi-

owing by them. The allowance is not in any proper sense an exemption, but is made by way of reaching the just amount of taxable property. Sometimes the deduction is from the ag-

tional debts" is not entitled to a reduction because of an unconditional liability under a lease for future payments of rent for a term continuing into the future: *Beecher v. Detroit Common Council*, 110 Mich. 456. Under the former tax-laws of New York it was held that a note given by a taxpayer and outstanding is to be allowed as a debt, though it is payable on demand, given for United States securities, and may have been given as a device to escape taxation: *People v. Ryan*, 88 N. Y. 142, citing *Stilwell v. Corwin*, 55 Ind. 433; *Smale v. Burr*, L. R., 8 C. P. 64. In Oregon it is held that a debt contracted for the mere purpose of evading taxation is not to be regarded: *Poppleton v. Yamhill County*, 8 Or. 337. See *Waller v. Yaeger*, 39 Iowa 228. The New York statute providing that no deduction from one's taxable property shall be allowed for debts incurred in purchasing non-taxable property is not to be construed as applying only where the debt is fraudulently incurred to avoid taxation: *People v. Barker*, 155 N. Y. 330. Under such a statute debts incurred in purchasing the good-will of a business cannot be deducted, good-will not being made taxable for town, county, and municipal purposes: *People v. Dederick*, 161 N. Y. 195. In Iowa it is held that the test of a taxpayer's right to an allowance for his indebtedness is whether the indebtedness is founded on an actual consideration regardless of notice. If he has given an actual obligation he is indebted: *Hutchinson v. Oskaloosa Equal. Board*, 67 Iowa 182. An exemption having been claimed by reason of an indebtedness incurred in an alleged purchase of stock, it was

held that the taxpayer never acquired the stock, so that he never became indebted therefor; and the reduction was denied: *People v. Coleman*, 61 Hun 626, 133 N. Y. 625. Claims against an estate which are contested by the executor are not "just debts" which may be deducted in determining the value of the estate for purposes of assessment: *People v. Commissioners*, 99 N. Y. 154. As to what is "indebtedness within the state," under an Oregon statute allowing such indebtedness to be deducted, see *Ankeny v. Multnomah County*, 4 Or. 271. Under the Oregon statute providing that whenever the assessor, through mistake or otherwise, shall return as taxable more than should be assessed to any person, the sheriff may remit the excess upon affidavit that the property was wrongfully assessed, *mandamus* will not lie to compel the sheriff to allow a deduction on account of indebtedness, such deduction not being contemplated by the statute: *Steel v. Fell*, 29 Or. 272. As to deduction of indebtedness in Indiana, see *Matter v. Campbell*, 71 Ind. 512. For the meaning of a statutory provision allowing deduction on account of other stocks and bonds "exempt from taxation by the laws of this state," see *Smalley v. Burlington*, 63 Vt. 443. In Kentucky a debt incurred for the purchase price of a railroad was held not available to the purchaser's administrator for the purpose of deduction, the estate having been released therefrom, and the administrator never intending to pay it; such intention being a requirement of the statute: *Baldwin v. Hewitt*, 88 Ky. 673. In New Hampshire the rule that the excess only

gregate of personal estate; sometimes it takes the form of an abatement from the taxable valuation of realty on account of

of the value of bank-stock over the amount of interest-bearing indebtedness for which it is pledged is taxable, applies to non-residents: *Farmington v. Darling*, 67 N. H. 441. A statute providing that non-residents doing business in the state should be assessed and taxed on all sums invested in the state "the same as if they were residents" does not permit the deduction of the non-resident's debts from his investment in the state; that deduction is to be made, if at all, from his general personal assets at his own domicile: *People v. Barker*, 141 N. Y. 118. A non-resident special partner was not allowed to deduct from his investment in New York any debts of the partnership: *People v. Barker*, 145 N. Y. 239. A firm doing business in a state and elsewhere cannot deduct, for the purposes of taxation, from the amount of its credits held in the state indebtedness incurred and owing for and on account of the branch of the firm business conducted in a foreign jurisdiction: *Barnes v. Flummerfelt*, 21 Wash. 498. For a case of allowance to a shareholder in a corporation of his proportion of the tax paid by the corporation, see *Railroad Co. v. Com'rs*, 87 N. C. 414. Under a statute providing that no one shall be taxed for shares in a domestic corporation, the property of which is already fully taxed, or for shares in a corporation in another state, which is liable to taxation in the state, and that no one shall be taxed on personal property except on the surplus of his ratable personal estate above his debts, such exempt corporate shares should not be included in the ratable personal estate from which one's debts are to be deducted in determining the taxable surplus: *Hall v. Bain*, 18 R. I. 413. Under the pres-

ent law of New York the debts of a corporation are to be deducted in assessing its personalty: *People v. Dederick*, 161 N. Y. 195. See *People v. Barker*, 141 N. Y. 196; *People v. Com'rs*, 51 Hun 641; *People v. Barker*, 91 Hun 642. An indebtedness incurred in purchasing a franchise cannot be deducted from the assets of an elevated railroad company in assessing all of its property for taxation: *People v. Barker*, 165 N. Y. 305. The New York statute authorizing corporate debts to be deducted from the assessed value of stock does not authorize the deduction of contingent liabilities: *People v. Feitner*, 166 N. Y. 129. A foreign corporation is not entitled to have deducted from the capital employed by it in New York the amount of debts incurred by it in acquiring such capital: *People v. Barker*, 86 Hun 148. In assessing for taxation the property of a foreign corporation doing business in New York, the corporation is not entitled to any deduction on account of debts, whether such debts are due within the state or elsewhere: *People v. Barker*, 86 Hun 618. For the deduction of their indebtedness formerly allowed to corporations in Kentucky, see *Commonwealth v. St. Bernard Coal Co. (Ky.)*, 9 S. W. Rep. 709. The present laws of that state do not permit such deduction in assessing a corporation for taxation: *Henderson Bridge Co. v. Commonwealth*, 99 Ky. 623; *Paducah St. R. Co. v. McCracken (Ky.)*, 49 S. W. Rep. 178. Deduction of *bona fide* debts from taxable credits allowed foreign corporation in Ohio: *Hubbard v. Brush*, 61 Ohio St. 252. For the deduction allowed in Utah, see *Commercial Bank v. Chambers (Utah)*, 61 Pac. Rep. 560. As to what deduction a foreign savings bank

mortgages thereon,¹ and sometimes it is allowed to be made from credits² only. The right to have debts deducted from the value of taxable property is not absolute, but is in the nature of a favor, and no constitutional right is violated by a law

may claim in New York, see *People v. Coleman*, 135 N. Y. 231. For the deduction allowed in Texas to private bankers of "money on deposit," see *Griffin v. Heard*, 78 Tex. 607. What constitutes indebtedness which may be deducted in favor of an insurance company, see *Alabama, etc. Ins. Co. v. Lott*, 54 Ala. 499; *Equitable Life Ins. Co. v. Board of Equal.*, 74 Iowa 178; *Hawkeye Ins. Co. v. Board of Equal.*, 75 Iowa 770; *Kansas Mut. L. Ins. Assoc. v. Hill*, 51 Kan. 636; *Kenton Ins. Co. v. Covington*, 86 Ky. 213; *People v. Davenport*, 91 N. Y. 574; *Ins. Co. v. Cappellar*, 38 Ohio St. 560; *Home F. Ins. Co. v. Lynch*, 19 Utah 189. The deduction allowed to railroad companies under the New Jersey statute of 1884 must be made from the local, and not from the state tax: *Williams v. Bettie*, 50 N. J. L. 132. For the deduction from the taxable property of building associations of the monthly instalments deposited in them, see *State v. Redwood Falls B. & L. Assoc.*, 45 Minn. 154. Where, without legal right, a stockholder's indebtedness in a bank had been deducted from the taxable value of his property, it was held there was no law by which such deduction could thereafter be placed on the duplicate as an omission and the taxes collected thereon: *State v. Akins*, 63 Ohio St. 182.

¹In California the mortgager is entitled to have the amount of the mortgage deducted from the value of the property, even though the mortgage, being made to the regents of the state university, is exempted from taxation: *People v. Board*, 77 Cal. 136. Where the mortgagee resides out of the state, the land-owner

in New Jersey is not entitled to a deduction, and the mortgagee's interest is not assessable: *King v. Manning*, 40 N. J. L. 461; *Crispin v. Vansyckle*, 49 N. J. L. 366. As to the deduction of mortgage indebtedness in Michigan, see *Detroit Common Council v. Board of Assessors*, 91 Mich. 78. It has been held that the assessor cannot be presumed to have made deductions for mortgages on land where the entry of the mortgage was not made in the proper column: *Henne v. Los Angeles County*, 129 Cal. 297. In New York no deduction, in assessing land, is made on account of encumbrances thereon: *People v. Jewell*, 9 Misc. Rep. 647. And in determining the inheritance tax to be imposed upon personalty, where the testator's entire estate is devised in trust for his children, the amount of the encumbrances secured by mortgage upon the land is not to be deducted from the amount of the personalty: *In re Sutton's Estate*, 3 App. Div. (N. Y.) 208. Mortgaged chattels are assessable to the mortgager in possession without deduction of the amount of the debt: *Fields v. Russell*, 38 Kan. 720. The statute providing that no mortgage or debt secured thereby shall be assessed for taxation unless a deduction therefor shall have been claimed and allowed is not applicable to a mortgage on commingled realty and personalty: *Newark v. Merchants' Ins. Co.*, 55 N. J. L. 145. Mortgage bonds exempt unless deduction therefor claimed by owner of land: *Merchants' Ins. Co. v. Newark*, 54 N. J. L. 138.

²Promissory notes are "credits" within the statute from which *bona fide* indebtedness of taxpayer may be

that permits the deduction of some debts and not of others.¹ Nor does the allowance of credits and deductions establish a want of uniformity where the law operates alike on all persons and property similarly situated.² It has been held that, even though the constitution gives the right to deduct indebtedness from credits, yet that right can be secured only in the manner provided by law; and therefore a statute requiring applications for reductions on account of debts to be made to the assessor in the first instance is constitutional.³ And, in general, it may be said that one cannot claim this allowance unless he takes the steps required by law for the establishment of his right thereto.⁴

deducted so as to reduce the amount for taxation: *Moore v. Hewitt*, 147 Ind. 464. Money on hand or on deposit is held not to be such a credit: *Morris v. Jones*, 150 Ill. 542; *Gray v. Boston Street Com'rs*, 138 Mass. 414; *Richmond, etc. R. Co. v. Com'rs*, 84 N. C. 504; *Pullman State Bank v. Manring*, 18 Wash. 250. Corporate stocks are not "credits" from which the owner's debts may be deducted: *Bridgnian v. Keokuk*, 72 Iowa 42; *Raleigh, etc. R. Co. v. Com'rs*, 87 N. C. 414. So, the owners of national bank stock have been held not entitled to deduct from the assessed value thereof the amount of their debts: *Dutton v. Citizens' Nat. Bank*, 53 Kan. 462; *Commercial Nat. Bank v. Chambers* (Utah), 61 Pac. Rep. 560, 182 U. S. 556; *Burrows v. Smith*, 95 Va. 694. But under a statute providing for exempting from taxation "so much of the debts due or to become due to any person as shall equal the amount of *bona fide* and unconditional debts by him owing," it was held that a shareholder in a national bank was entitled to the set-off against the amount of his shares: *Ruggles v. Fond du Lac*, 53 Wis. 436, citing *People v. Weaver*, 100 U. S. 539; *Pelton v. National Bank*, 101 U. S. 143; *Cummings v. National Bank*, 101 U. S. 153; *Evansville Nat.*

Bank v. Britton, 8 Fed. Rep. 867. And see *Boyer v. Boyer*, 113 U. S. 689; *Richards v. Rock Rapids*, 31 Fed. Rep. 505. In the state of Washington it is held that *bona fide* debts may be deducted from the assessed value of national bank shares: *Newport v. Mudgett*, 18 Wash. 271; and a stockholder in a state bank is entitled to have his share of the capital deducted in the credits from which his debt shall be deducted: *Bramel v. Manring*, 18 Wash. 421. Omitting credits from tax schedule in compliance with assessor's practice and direction does not cause taxpayer to lose his right of deduction of indebtedness therefrom: *Moore v. Hewitt*, 147 Ind. 464.

¹ *People v. Barker*, 155 N. Y. 330.

² *Edwards v. People*, 88 Ill. 340. For a case where such allowance was held void because non-uniform and equal, see *In re Assessment, etc. of Taxes*, 4 S. D. 6. See, also, *State v. Duluth Gas, etc. Co.*, 76 Minn. 96.

³ *State v. London & N. W. Mortgage Co.*, 80 Minn. 277.

⁴ A deduction for indebtedness may not be allowed by the board of equalization where no statement of particular indebtedness is made and sworn to as required by the statute: *Oregon, etc. Bank v. Catlin*, 15 Or. 342. An assessment made under a

Constitutional restrictions. Before considering the express exemptions from general taxation which it has been customary to make in state revenue laws, it will be convenient to examine briefly the constitutional provisions which have been adopted in the several states with the purpose of securing uniformity in taxation, and to make the rule of uniformity compulsory upon the legislature. The differences in these provisions are very considerable, but enough of them have been the subject of judicial consideration to make the decisions upon them a sufficient guide to the meaning of all.

Alabama. The constitution provided that "No man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services." The legislature granted a charter to an insurance company, and provided therein that "as a full commutation for all taxes, impositions, or assessments on the capital stock of said company or on any of its property or effects," the company should annually pay into the state treasury a specified sum of money; and the charter was declared unalterable, except with the consent of its trustees, for the term of twenty years. The commutation being contested, it was held that it must be deemed to have been granted in consideration of advantages to be derived by the public from the establishment of the corporation and the performance of its corporate functions and duties, and that the commutation was not therefore violative of the constitutional provision.¹

law invalid so far as not permitting a set-off of a stockholder's indebtedness is not invalid unless the stockholder has shown the assessor what his just debts are and taken the requisite steps to have his assessment made out accordingly: *Stanley v. Albany County*, 121 U.S. 535. Under the New Jersey statute relating to the taxation of railroads, debts cannot be deducted from the valuation of the property by the state board of assessors unless the reduction is applied for under the proper section of the act: *State v. Bettie*, 50 N. J. L. 132. The fact that the inventory returned by a taxpayer of the debts

for which he claims reduction does not give the addresses of some of the creditors does not authorize the listers to reduce debts as to which the proper information was given: *Sprague v. Fletcher*, 69 Vt. 69. Where the uncontradicted evidence adduced before the assessors of a town shows that a taxpayer's debts exceed the value of his personalty, they must strike out the assessment, and cannot arbitrarily disregard such proofs because the taxpayer fails to attend before them: *People v. Dykes*, 64 Hun 634.

¹ *Daughdrill v. Insurance Co.*, 31 Ala. 91. See *Illinois Central R. Co.*

Equality of taxation being a constitutional requirement, it is not competent to discriminate against a foreign insurance company to make the tax upon it correspond to the tax imposed upon home corporations in the state where such foreign corporation has its *situs*.¹ But there is no unconstitutional discrimination in a law imposing a license tax on "every sewing-machine company selling sewing machines," and on "all persons who engage in the business of selling sewing-machines," and exempting "merchants engaged in a general business, keeping sewing-machines as a part of their stock in trade."² And a statute imposing a tax on the business of a particular class of corporations is not invalid because the tax is onerous as compared with the taxation of other business, or because, as compared with the taxation of the business of other kinds of corporations, there is inequality. These considerations belong to the legislature.³

The constitution as revised afterwards contains a provision that "the property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as property of individuals," etc. Under this provision it is not competent to provide by law that the taxation of the property of corporations, or of any class thereof, shall not exceed a certain percentage which is below the limit to which the taxation of other property is restricted.⁴

Another provision is that "all taxes levied on property in this state shall be assessed in exact proportion to the value of such property." It is not competent for the legislature under this provision to prescribe or declare an arbitrary or artificial value to the property of individuals or corporations, and assess taxes on such valuation; and statutes to that effect are void.⁵

v. McLean County, 17 Ill. 291; *Ide v. Finneran*, 29 Kan. 654; *Louisiana Lottery Co. v. New Orleans*, 24 La. An. 86. Compare *Louisiana Cotton Manuf. Co. v. New Orleans*, 31 La. An. 440, and cases cited. *Contra*, *Home Ins. Co. v. Sweigert*, 104 Ill. 653.

¹ *Clark v. Mobile*, 67 Ala. 217.

² *Quartlebaum v. State*, 79 Ala. 1.

³ *Phoenix Assur. Co. v. Fire Department*, 117 Ala. 631. In this case a statute requiring all fire insurance

companies doing business in a certain city to pay an annual fee to the fire department of the city was held not void for inequality of the tax imposed, it being imposed alike on all fire insurance companies doing business in the particular city.

⁴ *Mobile v. Stonewall Ins. Co.*, 53 Ala. 570; *Perry v. Railroad Co.*, 65 Ala. 391; *State Auditor v. Jackson Co.*, 65 Ala. 142.

⁵ The statute in question provided

And the provision is violated by an act levying a tax of \$1 per annum upon each road wagon in a certain county for the benefit of the public roads.¹ But a license tax on attorneys and physicians does not violate the constitutional requirement of taxation by value;² nor is that requirement, or the one that corporations and individuals shall be taxed at the same rate, infringed by a statute requiring corporations to pay a privilege tax.³

Another provision of the constitution of Alabama prohibits the general assembly from authorizing cities to pass laws inconsistent with the general laws of the state. This, it has been held, is not violated by a statute authorizing a city to levy a license tax on railroads.⁴

Arkansas. In the fundamental law of this state it is ordained that "All property subject to taxation shall be taxed according to its value: that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value." This provision does not deny the legislature power to classify property for the purpose of taxation; for example, a statute providing that railroad property shall be assessed annually for taxation, whereas ordinary real estate is assessed only once in two years, and providing

for the assessment of railroad property like other property, but added that "in no case, where the data of such an estimate shall be in the possession of the board, shall such property be estimated at a sum less than that which, at an interest of eight per cent., would yield the sum shown by such data to constitute the net earnings of such property; such net earnings to consist of the whole earnings, deducting the running expenses of such road; but in no case nor to any extent is any allowance or deduction to be made on any other account." *Held* void. *Board of Assessment v. Alabama Cent. R. Co.*, 59 Ala. 551. The limit which the constitution prescribes for the taxa-

tion of property, and which is referred to in the text, is three-fourths of one per centum on the value. This does not invalidate a tax of two per cent. on the gross receipts of every telegraph company derived from business done within the state: *Western Union Tel. Co. v. State Board*, 80 Ala. 273.

¹*Smith v. Commissioners*, 117 Ala. 196.

²*McCaskell v. State*, 53 Ala. 510.

³*Phoenix Carpet Co. v. State*, 118 Ala. 143.

⁴*Holt v. Birmingham*, 111 Ala. 369; *Anniston v. Southern R. Co.*, 112 Ala. 557; *Alabama G. S. R. Co. v. Bessemer*, 113 Ala. 668.

also that railroad property shall be assessed by different instrumentalities from those employed in the valuation of other property, and failing to provide for an appeal from the assessment of railroad property, although an appeal is provided in other cases, is not void for want of uniformity.¹ Nor is this provision violated by a statute committing the assessment of express companies to the railroad commissioners, and providing that such companies shall be assessed for taxation at such proportion of their capital stock as the mileage over which they do business in Arkansas bears to their total mileage.² But where the legislature, by a city charter, undertook to exempt the property of the inhabitants from taxation for the construction of roads in the county of which the city formed a part, this was held invalid as a violation of the constitutional rule of uniformity.³ And where a statute divided a county into two separate judicial districts, and provided that the clerk should keep separate records of the financial affairs of each district, and that all revenue accruing to such county, from whatever source, should be used for the exclusive benefit in the district in which it should arise, it was held that if such act be deemed to have created two separate taxing districts in such county it was unconstitutional, and a tax for county purposes of five mills on property in one of such districts, and of three mills on property in the other, was void as conflicting with the constitutional requirement of uniformity of taxation.⁴ That requirement, however, does not apply to local taxes and will not prevent taxes on occupations,⁵ or taxes on land by area for levee purposes.⁶

By another provision of the constitution "All laws exempting property from taxation other than is provided" therein "shall be void." This avoids a statute so far as such statute provides that lands sold to the state for taxes, and afterwards donated to a railroad, "shall not be listed or subject to taxa-

¹ *St. Louis, I. M. & S. R. Co. v. Worthen*, 52 Ark. 529. The constitutional provision requiring equality of taxation was held

² *Wells, Fargo & Co.'s Express v. Crawford County*, 63 Ark. 576. violated by a certain statute and ordinance as applied to the business

³ *Fletcher v. Oliver*, 25 Ark. 289. of a dealer in "trading stamps:"

⁴ *Hutchinson v. Ozark Land Co.*, 57 Ark. 554. *Humes v. Fort Smith*, 93 Fed. Rep. 857.

⁵ *Washington v. State*, 13 Ark. 752. ⁶ *McGehee v. Mathis*, 21 Ark. 40.

tion until conveyed to actual purchasers.”¹ And it also avoids a statute directing that certain railroad property not within the classes of property to which taxation is restricted, be omitted from assessment.²

California. The constitution requires that “taxation shall be equal and uniform,” and that “all property in the state shall be taxed in proportion to its value, to be ascertained as provided by law.”³ Under this the following rulings have been made: 1. That “all property in the state” was to be understood as intending all private property only, and that it did not include the public property belonging to the United States or the state and its municipalities.⁴ 2. That exemptions of private property would be inconsistent with the requirement of equality and uniformity, and consequently were forbidden.⁵ 3. That the collateral inheritance tax-law is not unconstitutional because it exempts inheritances not exceeding \$500; the tax being on the right of succession, and hence not within the constitutional requirement that property shall be taxed according to its value.⁶ 4. That special assessments for local improvements need not be levied by value,⁷ but that whatever basis was adopted, exemptions of property falling within the class assessed were forbidden.⁸ 5. That a levy to be ex-

¹ Files v. State, 48 Ark. 529.

² Little Rock & Ft. S. R. Co. v. Worthen, 120 U. S. 97.

³ Const. Cal., art. 13, § 1. This provision is not self-executing, but leaves the machinery for ascertaining the value of all property for the purposes of taxation to be provided by the legislature. McHenry v. Downer, 116 Cal. 20.

⁴ People v. McCreery, 34 Cal. 432.

⁵ People v. McCreery, 34 Cal. 432; People v. Whartenby, 38 Cal. 461; People v. Eddy, 43 Cal. 331; Lick v. Austin, 43 Cal. 590. Where the constitution has prescribed that certain specific things shall be taxed as property, the legislature cannot exempt them: Mackay v. San Francisco, 113 Cal. 392. Authority to a board of supervisors to remit a tax or part of

a tax in a specified district would be inconsistent with the requirement of uniformity, and consequently invalid: Wilson v. Supervisors, 47 Cal. 91.

⁶ Wilmerding's Estate, 117 Cal. 281. This case also holds that the statute imposing the collateral inheritance tax is not to be held void as discriminating between persons standing in the same relation merely because it does not tax inheritances by brothers and sisters and does tax inheritances by children of such brothers and sisters.

⁷ Burnett v. Sacramento, 12 Cal. 76; Blanding v. Burr, 13 Cal. 343; Emory v. San Francisco Gas Co., 28 Cal. 345; Walsh v. Mathews, 29 Cal. 123; Crosby v. Lyon, 37 Cal. 242.

⁸ People v. San Francisco, etc. R. Co., 35 Cal. 606.

pended in protecting a district from inundation was to be considered a tax rather than a special assessment, and must therefore be made on property by valuation.¹ 6. That the requirement of uniformity in the taxation of property was not violated by a tax on business graduated by sales;² but it would be violated by a city ordinance imposing a higher fee upon a merchant selling goods by sample, but not bringing his stock within the corporate limits, than upon one who kept the stock there.³ 7. That solvent credits are property, and must be taxed as such to the person who owns them.⁴ 8. That the revenue law is not void for want of uniformity, because it makes unsecured taxes collectible when assessed, and secured taxes collectible several months later; there being a difference between secured and unsecured taxes such as warrants the classification made by the legislature.⁵ 9. That the revenue law is not void for want of uniformity, because of the regulations of different counties as regards enforcing collection of delinquent taxes being different,⁶ though it might be if it provided different rules for reaching the valuation of property by different classes, whereby substantial inequality was produced.⁷ 10. That an act has uniform operation in the constitutional sense if it operates uniformly throughout the municipality which alone is taxable under it.⁸ 11. That it is not incompetent, in providing for the relevy of a void tax, to provide for allowing sums paid thereon previously.⁹ 12. And that the requirement of taxation by value is satisfied by the ascertain-

¹ *People v. Whyler*, 41 Cal. 351.

² *Sacramento v. Crocker*, 16 Cal. 119.

³ *Ex parte Frank*, 52 Cal. 608.

⁴ *People v. McCreery*, 34 Cal. 432; *People v. Gerke*, 35 Cal. 677; *People v. Black Diamond Co.*, 37 Cal. 54; *People v. Whartenby*, 38 Cal. 461; *People v. Hibernia Bank*, 51 Cal. 243; *Bank of Mendocino v. Chalfant*, 51 Cal. 369. The fact that the debt is secured by mortgage on land which is also taxable makes no difference: *People v. Eddy*, 43 Cal. 331. See *McCoppin v. McCartney*, 60 Cal. 367; *Kirtland v. Hotchkiss*, 42 Conn. 426, 100 U. S. 491. Compare *Lick v. Aus-*

tin, 43 Cal. 590; *Savings Society v. Austin*, 46 Cal. 415. Under the provision of the constitution that "monies, credits, dues," etc., shall be taxed, loans are taxable, though secured by property exempt from taxation: *Security Savings Bank v. San Francisco (Cal.)*, 64 Pac. Rep. 898.

⁵ *Rode v. Siebe*, 119 Cal. 518.

⁶ *People v. Central Pac. R. Co.*, 43 Cal. 398.

⁷ *San Mateo Co. v. Railroad Co.*, 8 Sawy. 238; s. c., 13 Fed. Rep. 722.

⁸ *San Francisco v. Spring, etc. Works*, 54 Cal. 571.

⁹ *People v. Latham*, 52 Cal. 598.

ment of the value as directed by law, even though it be done before the passage of the law for levying the tax.¹

Colorado. The constitution provides that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax," etc., and shall be "levied and collected under general laws which shall prescribe such regulations as will secure a just valuation of all property for the purposes of taxation." It also authorizes the classification of property for taxation. Under these provisions a statute making railroad property a distinct class, providing for the assessment of all of a railroad company's property as a unit, and apportioning the tax among the counties and municipalities according to the number of miles of track therein, is constitutional.² The requirement of uniformity is not violated by a statute providing for the taxation of railroad cars other than those which belong to companies operating lines of railroad within the state, since adequate procedure for the taxation of such cars is otherwise provided, and the act merely provides a mode of procedure for taxing cars of the particular class.³ Nor is the provision for uniformity infringed by a tax on inheritances, such tax being a contribution which the state levies for itself as a condition on which the title to property shall

¹ *People v. Latham*, 52 Cal. 598. Further as to what is equal and uniform taxation, see *Beals v. Amador Co.*, 35 Cal. 624; *Chambers v. Satterlee*, 40 Cal. 497; *People v. Placerville, etc. R. Co.*, 34 Cal. 656; *Barton v. Kalloch*, 56 Cal. 95; *People v. Townsend*, 56 Cal. 633. A constitutional provision allowing the taxation of railroad corporations without deducting from the value of their property the amount of any mortgage or lien thereon, although it practically permits the taxing of such corporations at a higher rate upon their property than is assessed upon the property of others, is not in conflict with the fourteenth amendment to the federal constitution. The provision therein that a state shall not "deny

to any person the equal protection of the laws" does not apply to corporations: *Central, etc. R. Co. v. Board of Equal.*, 60 Cal. 35; *contra*, *Santa Clara County v. Southern Pac. R. Co.*, 18 Fed. Rep. 385. And see *ante*, p. 81. If a mortgage is not taxable when taken the mortgagee has no vested right in the exemption, and it may be made taxable afterwards: *McCoppin v. McCartney*, 60 Cal. 367. For a singular provision for the taxation of migratory herds of cattle, which was held void on grounds of inequality, see *People v. Townsend*, 56 Cal. 633.

² *Ames v. People*, 26 Colo. 83.

³ *American R. T. Co. v. Thomas*, 27 Colo. — (63 Pac. Rep. 410).

pass on the owner's death.¹ A just valuation being a constitutional prerequisite to a valid levy, a bill relating to the taxation of mining property is unconstitutional if it prescribes no regulations for securing such a valuation, but assesses all lode claims, irrespective of their value, at an arbitrary sum, and all placer claims at another arbitrary sum.² And a bill providing that the entire tax imposed on placer mines shall not exceed \$25 per acre, and on all other mining claims shall not exceed \$400 per one hundred linear feet, does not secure a just valuation of such property, inasmuch as the county tax alone might equal or exceed the prescribed rates.³ There is, however, no objection to the legislature's making a gross output of producing mines the criterion to govern assessors in determining the valuation.⁴ A statute in so far as it relates to listing money, notes, or credits for taxation, is not unconstitutional, in that it requires the "amount" instead of the "value" thereof to be stated; for the listing is not an assessment.⁵

Another provision of the constitution of Colorado forbids exemptions, with the exception of such as that instrument specifies. Under this prohibition and under the provision requiring uniformity, a statute which relieves real estate in cities and villages from county taxation for road purposes, and makes no provision for its taxation for street purposes, is unconstitutional.⁶ A constitutional provision that mines and mining claims shall be exempt from taxation for ten years from its adoption, "and thereafter may be taxed as provided by law," renders new legislation necessary in order to render such property taxable at the end of the ten years.⁷

Connecticut. "There is little in the constitution of this state to limit the discretion of the legislature in imposing

¹ In re House Bill No. 122, 23 Colo. 492.

² In re House Bill No. 270, 9 Colo. 635.

³ In re House Bill No. 270, 9 Colo. 635.

⁴ In re House Bill No. 270, 9 Colo. 635.

⁵ *People v. Board of Com'rs* (Colo.), 59 Pac. Rep. 733.

⁶ *Gunnison County v. Owen*, 7 Colo. 467. As to the exemption of irrigat-

ing canals from separate taxation, see *Empire L. & C. Co. v. Board of Com'rs*, 21 Colo. 244.

⁷ In re House Resolution, 9 Colo. 622. The adoption of the constitutional amendment submitted in 1879 did not extend the period of exemption of mines, etc., beyond the ten years: In re Constitutionality of House Bill No. 18, 9 Colo. 623. See further as to this exemption, *Dyke v. Whvte*, 17 Colo. 296.

taxes.”¹ Any express provision that “taxation shall be uniform and equal” is not to be found in the constitution; and the provisions of that instrument exclude the possibility of a limitation of legislative power by any implied mandate to that effect.²

Dakota. The organic act³ provides that the territory shall not pass any law impairing the rights of private property, “nor make any discrimination in taxing different kinds of property; but all property subject to taxation shall be taxed in proportion to its value.” This, it has been held, is not infringed by a statute providing for the collection of a territorial tax assessed upon personal property in non-organized counties, leaving real property therein untaxed.⁴ Nor is it contravened by a statute imposing upon railroad companies an assessment upon gross earnings “in full of any and all other taxes and assessments whatever;” for this does not constitute an exemption from taxation but a change in the mode thereof.⁵

Florida. The constitutional requirement that the legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, does not apply to municipal taxation.⁶ Nor is the equality or uniformity of a county assessment destroyed by a statute directing one-half of the special road tax levied by county commissioners and realized from the taxable property in incorporated cities and towns to be turned over to

¹State v. Traveler's Ins. Co., 70 Conn. 590. This case holds that there is nothing in the constitution which militates against the validity of a statute which, by compelling payment of taxes on corporate stock belonging to non-residents, may practically throw upon the latter the weight of double taxation.

²State v. Travelers' Ins. Co., 73 Conn. 255. Here is upheld a statute that divides the stockholders of insurance companies into two classes, residents and non-residents, subjecting one to municipal taxation and the other to state taxation, and that fixes the amount to be contributed by non-residents by rules which dif-

fer from those applicable to residents.

³Rev. St. U. S., § 1925.

⁴Ferris v. Vannier, 6 Dak. 186.

⁵Northern Pac. R. Co. v. Barnes, 2 N. D. 210; McHenry v. Alford, 168 U. S. 651. See Northern Pac. R. Co. v. Walker, 47 Fed. Rep. 681, followed in Northern Pac. R. Co. v. McGinnis, 4 N. D. 494.

⁶Spratt v. Jacksonville, 36 Fla. 550. Charter provisions held to provide for the uniform and equal rate required by the constitution, and to prescribe regulations insuring a just valuation of all the real estate subject to taxation in the city: Tampa v. Mugge, 40 Fla. 326.

municipal authorities to be used in repairing streets in such cities and towns.¹

Georgia. The constitution provides that "All taxation shall be uniform upon the same class of subjects, and *ad valorem* on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." This provision is not contravened by a statute which provides for taxing railroad property for county purposes at the regular rate *ad valorem* which is levied by the county authorities on other property, each county through which the road runs being allowed to tax at that rate all the company's property, real and personal, located in that county, and in addition thereto a proportion of its rolling stock and other floating or unlocated property corresponding to the ratio between its property, real and personal, located in the given county, and the aggregate of its located property in all the counties through which the road runs.² As the rate need only be uniform within the county, it is no objection to a highway act that the rates of taxation provided may vary in different counties.³ If the rate of taxation is uniform, the fact that the method applied to realty differs from that applied to personalty does not render the scheme of taxation unconstitutional.⁴ It seems that the requirement of *ad valorem* taxation means only that property of each species shall be taxed uniformly, and does not preclude the taxation of realty and personalty at different rates.⁵ A statute providing for a tax on the stock of a building association, and that it shall be in lieu of all other taxes against said association, is, as to the latter provision, in violation of the constitutional provisions requiring taxation to be uniform and *ad valorem*.⁶ The *ad valorem* requirement precludes the taxation of animals by the head,⁷ but income is not property within

¹ Commissioners v. Jacksonville, 36 Fla. 196.

² Columbus S. R. Co. v. Wright, 89 Ga. 574.

³ Haney v. Board of Com'rs, 91 Ga. 770.

⁴ McLendon v. La Grange, 107 Ga. 356.

⁵ Waring v. Savannah, 60 Ga. 93. A city may commute highway labor

on the streets for a money payment: Johnston v. Macon, 62 Ga. 645.

⁶ Georgia State Building, etc. Assoc. v. Savannah, 109 Ga. 63; Atlanta Building, etc. Assoc. v. Stewart, 109 Ga. 80.

⁷ Livingston v. Albany, 41 Ga. 21. Compare Goodwin v. Savannah, 53 Ga. 410.

its terms,¹ nor is business; and occupations as such may be taxed.² It being necessary only that all taxation be uniform on the same class of subjects, one kind of business or one occupation may be taxed and not another;³ and taxes on certain vocations may be required to be paid in advance and the persons liable for such taxes may be required to register their names and places of business before being authorized to pursue such vocations.⁴ The same tax must, however, be levied on all members of the class taxed.⁵ Persons engaged in the same occupation, if not taxed alike, should be classified by some clear distinction in business, other than the amount or value of the business; or, if the tax be scaled according to the amount or value, it should, to correspond with the sense and spirit of the constitution, be *ad valorem*.⁶ A city tax on common carriers who drive wagons, drays, etc., is lawfully apportioned according to the number of vehicles used by them respectively, and such apportionment accords with the uniformity rule.⁷ The requirement that all taxes shall be levied and collected under general laws avoids special acts creating boards of equalization in two counties.⁸

Another provision of the constitution of Georgia declares that all laws exempting from taxation property other than what is therein enumerated shall be void. Therefore the legislature cannot lawfully exempt from taxation any property except that which it is expressly authorized to exempt.⁹ And a provision in a city charter exempting from municipal taxation property which under the present constitution cannot be so exempted was abrogated by the adoption of the latter instrument.¹⁰ A charter provision that the mayor and city council shall have power to levy and collect an *ad valorem* tax on all real and personal property within the city, "except such real

¹ Waring v. Savannah, 60 Ga. 93.

⁶ Johnston v. Macon, 62 Ga. 645.

² Burch v. Savannah, 42 Ga. 596; Bohler v. Schneider, 49 Ga. 195; Home Ins. Co. v. Augusta, 50 Ga. 530; Rome v. McWilliams, 52 Ga. 251; Decker v. McGowan, 59 Ga. 805.

See Davis v. Macon, 64 Ga. 128; Burr v. Atlanta, 64 Ga. 225.

³ Cutliff v. Albany, 60 Ga. 597; Weaver v. State, 89 Ga. 639.

⁷ Goodwin v. Savannah, 53 Ga. 410. See State v. Endom, 23 La. An. 663.

⁸ Stewart v. Collier, 91 Ga. 117.

⁹ Atlanta Nat. Building, etc. Assoc. v. Stewart, 109 Ga. 80.

⁴ McGhee v. State, 92 Ga. 21.

¹⁰ McLendon v. Lagrange, 107 Ga. 356.

⁵ Cutliff v. Albany, 60 Ga. 597.

property as is used for farming purposes only," is void in so far as it creates an exemption of farming land, such exemption being prohibited by the constitution.¹ But the constitutional prohibition of exemptions does not avoid a statute taxing a building association on all stock upon which no advances have been made to stockholders merely because of a proviso which, properly construed, means that stock which has no value, because advances have been made upon it up to its full value, need not be taxed.²

Illinois. The constitution prescribes that the "general assembly shall provide for levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his or her property," and that the "general assembly may tax peddlers, auctioneers, brokers, hawkers, merchants, showmen, insurance, telegraph and express interests or business, in such manner as it shall from time to time direct by general law uniform as to the class upon which it operates." Also that "the corporate authorities of counties, townships, school districts, cities, towns, and villages may be vested with power to assess and collect taxes for corporate purposes, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same." As to these provisions it has been decided that they "were manifestly inserted in the fundamental law for the purpose of insuring equality in the levy and collection of the taxes to support the government, whether levied for state, county, or municipal purposes. The design was to impose an equal proportion of these burthens upon all persons within the limits of the districts or body imposing them. Under these provisions the legislature has no power to exempt or release a person or community of persons from their proportionate share of these burthens. Not having such power themselves they are unable to delegate such power to these inferior bodies."³ These provisions preclude discrimination in favor of or against any classes of prop-

¹ *Smith v. Americus*, 89 Ga. 810.

² *McGowan v. Savannah Mut. L. Assoc.*, 80 Ga. 515.

³ *Hunsaker v. Wright*, 30 Ill. 146, 148. See *Trustees v. McConnell*, 12 Ill. 138; *O'Kane v. Treat*, 25 Ill. 458;

Dunham v. Chicago, 55 Ill. 357; *Madison Co. v. People*, 58 Ill. 456. Another provision authorized an exemption of property for schools, etc., as to which see *University v. People*, 99 U. S. 309; *People v. Soldiers' Home*, 95 Ill. 561.

erty or persons whatsoever, and therefore personalty or improvements in realty cannot be favored in taxation¹ or the property of railroad companies disfavored.² The provisions recited require the taxation of loans or any other credits, these being property as much as lands or chattels in possession;³ they do not admit of residents in one part of a road district being exempted from taxes for the roads in another part;⁴ nor of one class of counties being taxed a higher rate for state purposes than another class which happens to be more largely indebted for local purposes;⁵ nor of residents in a city being exempted from county taxes for roads and bridges because of their liability to street taxes.⁶ And they are violated where a special charter of a city declares that parcels of land within the city limits exceeding ten acres in extent shall be exempt from taxation for city revenue as long as they are not subdivided.⁷ They are not, however, contravened by a city charter prohibiting the town wherein the city lies, or the town officers, from levying or collecting any road tax within the city, and giving the city exclusive control over streets and alleys, and authority to improve and maintain them, and to raise necessary funds by taxation.⁸ Where a county board is the corporate authority for several towns, it must, in making an assessment in any one of them, observe the rule of uniformity therein.⁹ Equality and uniformity between taxpayers being the dominant idea of the constitution, which nowhere prevents the legislature from

¹ *Primm v. Belleville*, 59 Ill. 142.

² *Bureau County v. Railroad Co.*, 44 Ill. 229; *Chicago, etc. R. Co. v. Boone County*, 44 Ill. 240. See *Law v. People*, 87 Ill. 385. Uniformity would be destroyed if a municipal board without authority were to reduce a part of the assessments: *Sherlock v. Winnetka*, 68 Ill. 530; or if a county clerk, in computing the rate of a tax to be levied upon property in a school district for school purposes, were to omit property subject to assessment, thus necessitating a greater rate to be levied upon all other property: *Vitum v. People*, 183 Ill. 154.

³ *Trustees v. McConnell*, 12 Ill. 138; *People v. Worthington*, 21 Ill. 173.

⁴ *O'Kane v. Treat*, 25 Ill. 458. The exemption was of residents within a municipal corporation from being taxed for roads beyond its limits but within the same road district. Compare *Pleasant v. Kost*, 29 Ill. 490, 494; *Madison County v. People*, 58 Ill. 456. And see *Allhands v. People*, 82 Ill. 234.

⁵ *Ramsey v. Hoeger*, 76 Ill. 432.

⁶ *Cooper v. Ash*, 76 Ill. 11. Compare *People v. Ulster Supervisors*, 94 N. Y. 263.

⁷ *Hayward v. People*, 145 Ill. 55.

⁸ *Kenaga v. Kerr*, 123 Ill. 659.

⁹ *People v. Knopf*, 171 Ill. 191.

fixing the assessed value at less than the full value, the statute requiring one-fifth of the actual value to be taken as the assessed value is not void.¹ The provisions of the constitution are not violated by a statute dividing the property of decedents' estates into classes, and levying a tax by valuation on the right of succession to certain classes at different rates, and exempting other classes; the right of succession being created by statute the state may impose conditions thereupon.² The requirement of uniformity is not violated by a statutory provision for a board of review, in counties of a certain population, different from other counties in the state.³ The different kinds of corporations may be classified for taxation;⁴ gas-light companies may be classified separately from other manufacturing companies;⁵ railroad companies may be put in a class by themselves for taxation;⁶ foreign and domestic insurance companies may be put in different classes and taxed differently;⁷ and the companies of a state which in its taxation discriminates as between its own and foreign companies may be made a class by themselves for corresponding taxation.⁸ The constitution is not violated by license taxes, if laid uniformly,⁹ and these taxes are only required to be uniform upon all who fall within the same class.¹⁰ Persons dealing in intoxicating drinks may be classified according to the kind of drinks they sell.¹¹ The constitution does not preclude the levy of poll taxes,¹² nor are its provisions violated by allowing parties to

¹ *Chicago v. Fishburn*, 189 Ill. 367.

² *Kochersperger v. Drake*, 167 Ill. 122.

³ *People v. Board of Com'rs*, 176 Ill. 576. See *People v. Knopf*, 171 Ill. 191; *Burton Stock-Car Co. v. Traeger*, 187 Ill. 9.

⁴ *Coal Run Coal Co. v. Finlen*, 124 Ill. 666.

⁵ *Williams v. Rees*, 9 Biss. 405.

⁶ See *Ramsey v. Hoeger*, 76 Ill. 432; *Porter v. Railroad Co.*, 76 Ill. 561; *Ottawa Glass Co. v. McCaler*, 81 Ill. 556; *Pacific, etc. Co. v. Lieb*, 83 Ill. 602; *Chicago, etc. R. Co. v. Siders*, 88 Ill. 320; *State Railroad Tax Cases*, 92 U. S. 575.

⁷ *Hughes v. Cairo*, 92 Ill. 339. See *Ducat v. Chicago*, 48 Ill. 172; *Walker v. Springfield*, 94 Ill. 364; *Insurance Co. v. New Orleans*, 1 Woods 85.

⁸ *Home Ins. Co. v. Sweigert*, 104 Ill. 653; *Union Cent. L. Ins. Co. v. Durfee*, 164 Ill. 186. *Contra*, *Clark v. Mobile*, 67 Ala. 217.

⁹ See *Walker v. Springfield*, 94 Ill. 364; *Wiggins Ferry Co. v. East St. Louis*, 102 Ill. 562; *Braun v. Chicago*, 110 Ill. 186; *United States Distilling Co. v. Chicago*, 112 Ill. 19.

¹⁰ *Braun v. Chicago*, 110 Ill. 186.

¹¹ *Timm v. Harrison*, 109 Ill. 593.

¹² *Sawyer v. Alton*, 4 Ill. 127.

commute.¹ A city ordinance imposing on bicycles and other wheeled vehicles a graduated tax to be created into a "wheel-tax fund" for the improvement of streets, when such vehicles are already subject to an *ad valorem* tax, part of which is appropriated for the same purpose, and when also such vehicles are of varying values, is void, as being not only double taxation, but as violating the principles of equality and uniformity.² The proviso, in a statute creating sanitary districts, and providing for the establishment of docks and water-power, that nothing therein contained shall be construed to abridge or prevent the state from thereafter requiring part of the funds derived from such water-power to be paid to the state, is not in conflict with the constitutional provision that taxation shall be uniform, since such proviso is not an exercise of the taxing power.³

License fees imposed under the police power do not come under the constitutional provisions referred to, and they may be graduated on other reasons than those of general uniformity.⁴ But equality among the class taxed is nevertheless to be kept in view.⁵

The provision of the constitution of Illinois forbidding the passage of special laws regulating township and county affairs is not violated by a statute providing for counties of a certain population a board of assessors different from the rest of the state.⁶ The classification of the counties of the state as a basis for legislation on the subject of taxation is valid where the legislation is uniform and general; but a statute is not uniform and general which arbitrarily restricts the powers of municipalities in certain counties in respect to incurring indebtedness and levying taxes.⁷ An ordinance requiring a particular street railway company to pay an annual tax on each mile of

¹ *Chicago v. Sheldon*, 9 Wall. 50; 46 Ill. 392; *Lovington v. Trustees*, 99 Ill. 564; *Timm v. Harrison*, 109 Ill. 593.

² See *Braun v. Chicago*, 110 Ill. 186; *East St. Louis v. Wehrung*, 46 Ill. 392.

³ *People v. Board of Com'rs*, 176 Ill. 576; *Burton Stock-car Co. v. Traeger*, 187 Ill. 9.

⁴ *Chicago v. Collins*, 175 Ill. 445.

⁵ *People v. Nelson*, 133 Ill. 565.

⁶ See *East St. Louis v. Wehrung*,

⁷ *People v. Knopf*, 183 Ill. 410.

its road does not conflict with that provision of the Illinois constitution which forbids special laws where a general law is applicable.¹

Indiana. The constitution provides that "the general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes as may be specially exempted by law."² It also provides that "the general assembly shall not pass local or special laws" "for the assessment and collection of taxes for state, county, township, or road purposes."³ Of these provisions it has been said, they "do not prohibit local taxation for objects in themselves local. They require a general, uniform levy for state purposes, but they do not forbid local taxation under general laws. Nor do we think they prohibit indirect taxation by way of licenses upon particular pursuits, etc. Such indirect taxation may be made effectual as a police regulation. The taxing, which is a part of the legislative power of the state, is supreme, except where limitations are imposed. Indirect taxation, by way of tariffs, etc., has ever been regarded a legitimate exercise of the taxing power, and we do not think a provision in the constitution requiring the general levy of direct taxes for state purposes to be upon a uniform assessment implies a prohibition of all other taxation. Such, at all events, is not the conventional force of its language."⁴

¹ *Chicago General R. Co. v. Chicago*, 176 Ill. 253.

² "This provision does not confer the power of taxation. It is rather a limitation upon the power to tax:" *State v. Holliday*, 150 Ind. 216.

³ As to what is such a local or special law, see *Board of Com'rs v. State*, 155 Ind. 604.

⁴ *Perkins, J.*, in *Anderson v. Kerns Draining Co.*, 14 Ind. 199, citing *La-Fayette v. Jenners*, 10 Ind. 70, 75; *The Bank v. New Albany*, 11 Ind. 139; *Aurora v. West*, 9 Ind. 74. To the same effect is *Bright v. McCul-*

lough, 27 Ind. 223, in which the authorities are reviewed by *Elliott, J.* See *Loftin v. National Bank*, 85 Ind. 341. An ordinance imposing a license tax on brewers, distillers, and dealers in malt liquors, with the provision that it shall not apply to residents engaged in the wholesale business of bottling and vending bottled beer, is void as discriminating in favor of residents as against non-residents, and in favor of some residents against other residents: *Indianapolis v. Bie-ler*, 138 Ind. 30.

Nor do these provisions require the rate of assessment to be equal for all purposes throughout the state, but only to be equal and uniform throughout the district for which the tax is levied.¹ In prescribing regulations "to secure a just valuation of all property," the legislature must exercise a discretion, and unless the method adopted be clearly inadequate to secure the result, the courts cannot interfere. A statute for the taxation of railroad property, which authorizes the assessors in estimating the value of the road to take into consideration its location for business, the competition of other roads, its earnings, etc., cannot therefore be held unconstitutional.² But a tax imposed on one township only, for the erection therein of a county court-house and jail, is void, the purpose of the tax not being a township purpose, and a tax for a county purpose being required to be uniform and equal throughout the county.³ And a statute creating a firemen's pension fund for the pensioning of disabled firemen, and providing that foreign insurance companies shall pay a portion of their net income to the fund, contravenes the constitution, being local and not uniform.⁴ The legislature is not precluded by the constitution from making exemptions,⁵ but the exemptions must be by uniform rule; they cannot be made to apply to one class of cities and not to others,⁶ nor to one class of persons and not to others,⁷ nor can they be allowed except in the cases enumerated by the constitution.⁸ A tax for a general purpose cannot be levied on one

¹ *Adamson v. Auditor of Warren County*, 9 Ind. 174; *Conwell v. O'Brien*, 11 Ind. 419; *Covington Drawbridge Co. v. Auditor*, 14 Ind. 331; *Bright v. McCullough*, 27 Ind. 223; *Richmond v. Scott*, 48 Ind. 568; *Loftin v. National Bank*, 85 Ind. 341. The provision that the legislature shall provide by law for a general and uniform system of common schools does not mean that the legislature must directly and by a statute levy all taxes for each locality, or that it shall prescribe a rule for every school district in the state; but the legislature must, by a general law, provide for conducting schools and securing revenues from taxation for their support, through the instrumentalities of govern-

ment: *Robinson v. Schenck*, 102 Ind. 307.

² *Louisville, etc. R. Co. v. State*, 25 Ind. 177.

³ *Board of Com'rs v. State*, 155 Ind. 604.

⁴ *Henderson v. London & L. Ins. Co.*, 135 Ind. 23.

⁵ *Bank of the State v. New Albany*, 11 Ind. 139. See *Connersville v. State Bank*, 16 Ind. 105; *King v. Madison*, 17 Ind. 48.

⁶ *McDougal v. Brazil*, 83 Ind. 211.

⁷ Exemptions made only to "a widow, unmarried female, or female minor whose father is deceased," held void: *State v. Indianapolis*, 69 Ind. 375; *Warren v. Curran*, 75 Ind. 309.

⁸ *State v. Workingmen's Building, etc. Assoc.*, 152 Ind. 278. This case

species of taxable property only, and therefore a levy of a specific tax on land by the acre for highway purposes without taxing personalty is void.¹

Iowa. The constitution provides that all laws of a general nature shall have uniform operation; that the general assembly shall not grant to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not belong equally to all citizens; that the general assembly shall not pass local or special laws for the collection of taxes, and that "the property of all corporations for pecuniary profit now existing or hereafter created shall be subject to taxation the same as that of individuals." These provisions do not require uniformity of methods of reaching property for taxation, or render absolute equality imperative, and if they did they would be impossible of enforcement.² In the case of railroad, express, telegraph, and other similar property, it is not incompetent to provide for its assessment and valuation by a state board, and for the apportionment of the valuation among the municipalities for the purposes of local taxation; the law for the purpose making no distinction between such property as may be owned by individuals and that owned by corporations.³ A statute providing for the assessment of railroad property every year, while other property is assessed every alternate year, is valid.⁴ The constitution does not preclude a statute requiring all foreign insurance companies to pay a heavy tax on their business

holds that any law directly or indirectly exempting the stock of a building and loan association from assessment at its true cash value is void.

¹ *Bright v. McCullough*, 27 Ind. 223. A statute providing that persons residing outside of a town, but sending their children to the town school, shall, with their property, be liable to a school tax as if they resided in the town, on all property owned by them in the township in which the school is located, is not in conflict with the constitutional requirement of uniform and equal taxation: *Kent v. Kentland*, 62 Ind. 291.

² *Dubuque v. Chicago, etc. R. Co.*, 47 Iowa 196; *Macklot v. Davenport*, 17 Iowa 379; *Warren v. Henly*, 31 Iowa 40. It is competent to tax a railroad bridge separately from the railroad and on a different basis: *Union Pac. R. Co. v. Pottawatomie County*, 4 Dill. 497. See *Chicago, etc. R. Co. v. Sabrela*, 19 Fed. Rep. 177.

³ *Dunlieth, etc. Bridge Co. v. Dubuque*, 32 Iowa 427; *Dubuque v. Chicago, etc. R. Co.*, 47 Iowa 196; *Express Co. v. Ellyson*, 28 Iowa 370.

⁴ *Central Iowa R. Co. v. Wright Supervisors*, 67 Iowa 199.

done within the state as a condition of their doing business within its limits, but discriminating in favor of domestic companies and against foreign companies by imposing higher taxation on the latter.¹ The fact that under the code national banks are liable for taxes against the stock only in case they hold dividends of the owner, and that under a statute state banks are liable for such taxes absolutely, does not render the latter act unconstitutional as a special law.² The constitution is not violated by taxing a corporation on its capital and also taxing the shareholders on their shares.³ A statute exempting from payment of a peddler's tax all persons who have served in the Union army or navy is unconstitutional and void, the classification being unreasonable.⁴ Exemptions of corporate property from taxation are precluded, and consequently the court, in any doubtful case, should construe a revenue law as not intending to make an exemption.⁵ A statute imposing a tax on the gross earnings of insurance companies, and which exempts them from all other taxation except on real estate and for special assessments, is invalid.⁶ But a statute is not invalid which, while in terms exempting from municipal taxation the franchises and property of a water company, in effect applies the taxes as they would otherwise become due in payment or in part consideration of water rent.⁷ And where there is no power to make an exemption there is none to release a levy of taxes after it has been made.⁸ Where the county board orders all property to be assessed at fifty per cent. of its cash value, and afterwards, acting as a board of equalization, orders that fifty per cent. be added to all assessments on money and credits, the latter order is void as creating an inequality in the taxation instead of equalizing it.⁹

¹Scottish Union, etc. Ins. Co. v. Herriott, 109 Iowa 606.

²Primghar State Bank v. Rerick, 96 Iowa 238.

³Cook v. Burlington, 59 Iowa 251.

⁴State v. Garbrowski (Iowa), 82 N. W. Rep. 959.

⁵Iowa Homestead Co. v. Webster County, 21 Iowa 221; Dubuque, etc. R. Co. v. Webster County, 21 Iowa 235.

⁶Hawkeye Ins. Co. v. French, 109 Iowa 585.

⁷Grant v. Davenport, 36 Iowa 405. See Bartholomew v. Austin, 85 Fed. Rep. 359, 29 C. C. A. 568.

⁸Dubuque v. Illinois, etc. R. Co., 39 Iowa 56. The statute of Iowa exempts a homestead from taxation if it is listed for taxation separate from other property: Salter v. Burlington, 42 Iowa 531.

⁹Manson L. & T. Co. v. Heston, 83 Iowa 377.

Kansas. The constitutional provision that "the legislature shall provide for a uniform and equal rate of assessment and taxation" is not violated by state assessment of railroads which extend into unorganized territory, even though other property in such territory, by reason of the want of county government and machinery, escapes taxation altogether.¹ This provision aims at a certain end and not at the manner or mode of reaching that end; and the legislature may choose different methods for different kinds of property, but keeping in view the uniformity and equality of rate which the constitution requires.² For the same reason the requirement as to rate is not violated by the action of a local board in refusing to adopt, when it makes a levy for current expenses of the county, or for any other purpose except state taxes, the valuation fixed by the state board of equalization.³ Nor is the rule of uniformity infringed by a statute authorizing the levy and collection of state delinquent taxes upon and from all the property of the county—making each county liable for delinquencies in the state tax apportioned to it.⁴ Nor does the provision requiring uniformity and equality of rate prevent the passage of a "compromise law" for the clearing up of arrearages, where delinquent taxes have accumulated beyond the ability of owners to pay or of the state to enforce.⁵ Nor does it deprive the legislature of power, when the boundary lines of towns are changed or new towns created, to make an adjustment as to pre-existing debts and provide taxation for their payment.⁶ Nor is this provision contravened by a statute authorizing the county commissioners of a certain county to purchase all or any bridges built on the public highways by any township or private persons, and pay for the same by the issue of county bonds, since it does not at-

¹ *Francis v. Railroad Co.*, 19 Kan. 303. As to the right of a company so situated to such rebates as are allowed to taxpayers generally, see *Atchison, etc. R. Co. v. Francis*, 23 Kan. 495.

² *Gulf R. Co. v. Morris*, 7 Kan. 210; *Ottawa County v. Nelson*, 19 Kan. 234; *Board of Com'rs v. Missouri, K. & T. R. Co. (Kan.)*, 61 Pac. Rep. 693.

³ *Board of Com'rs v. Missouri, K. & T. R. Co. (Kan.)*, 61 Pac. Rep. 693.

⁴ *Atchison, T. & S. F. R. Co. v. Clark*, 60 Kan. 831.

⁵ *Ide v. Finneran*, 29 Kan. 569; *Daughdrill v. Insurance Co.*, 31 Ala. 91; *Illinois Central R. Co. v. McLean County*, 17 Ill. 291; *New Orleans v. Insurance Co.*, 31 La. An. 440.

⁶ *Ottawa County v. Nelson*, 19 Kan. 234. There is a general discussion in this case of the constitutional provision recited.

tempt to provide for a rate of assessment or taxation to pay the bonds, but merely authorizes the purchase of bridges and the issue of bonds.¹ The provision is, however, violated by a statute providing for the taxation of personal judgments, but exempting certain important kinds of judgments.² And by a statute providing for the taxation of contracts of insurance made outside of the state with insurance companies not authorized to do business in Kansas, because such statute imposes no tax on policies written within the state by authorized companies, and because, though imposing a property tax, makes no provision for assessment or valuation, and yet attempts to make an arbitrary exaction.³ The constitutional restriction as to equality and uniformity of rate does not apply to license taxes, and the amount of the tax, as well as the method of imposing it, is left to legislative discretion.⁴ And the legislature has power to allow the levy of license taxes by municipalities on insurance companies doing business therein.⁵

Kentucky. While taxes for general purposes should be assessed generally upon the subjects of taxation, yet when the benefits of a particular tax are restricted to one class of persons, a member of that class cannot be heard to object that those who are excluded from its benefits are not taxed also. Therefore, white persons taxed for schools which are open to white persons only, cannot object to the tax as unconstitutional, because of its not being laid upon colored persons also.⁶ Under

¹ Commissioners v. Smith, 48 Kan. 331.

² Hamilton v. Wilson, 61 Kan. 511.

³ In re Page, 60 Kan. 842.

⁴ In re Martin (Kan.), 64 Pac. Rep. 43.

⁵ Leavenworth v. Booth, 15 Kan. 627.

⁶ Marshall v. Donovan, 10 Bush 681. The court, per Lindsay, J., says: "As a general proposition, taxation to be constitutional must be as nearly as practicable equal and uniform. To that general rule, however, there are well recognized exceptions. When all are alike benefited by the taxation, the burden should be a common

one; but when the benefits are special and peculiar, the contributions may be so laid as to exempt from taxation those persons who are by the law itself excluded from all participation in the advantages which are expected to arise from the system, institution, or improvement to the establishment, construction, or maintenance of which the money raised is to be appropriated." In Claybrooke v. Owensboro, 16 Fed. Rep. 297, the statute for this separate taxation was held void as opposed to the fourteenth amendment of the federal constitution. Railroad company not allowed to claim ex-

the Bill of Rights, providing that "No man or set of men are entitled to exclusive, separate public emoluments or privileges from the community but in consideration of public services," it has been held that an act exempting an hotel estate was invalid.¹

The new constitution provides that "Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax, and all taxes shall be levied by general laws," and "all property whether owned by natural persons or corporations shall be taxed in proportion to its value, unless exempted by this constitution." These provisions preclude the application of the old rule relieving from municipal taxation property which, though brought within the territorial limits of a city, is supposed, owing to its situation or mode of use, not to share in the benefits of city government.² Therefore provisions of a city charter under which lands used for agricultural purposes were exempt from taxation, became inoperative at once upon the adoption of the constitution,³ and a statute extending a city's boundaries was repealed so far as it exempted farming lands from municipal taxation.⁴ Statutes enacted prior to the present constitution are repealed by it so far as they authorize the equalization of assessments upon any other basis than the cash value of the property assessed.⁵ A statute providing for the assessment of distilled spirits in

emption as not subject to identification by color: *Trustees v. Louisville* (Ky.), 30 S. W. Rep. 620.

¹ *Lancaster v. Clayton*, 86 Ky. 373.

² *Briggs v. Russellville*, 99 Ky. 515; *Pence v. Frankfort*, 101 Ky. 534; *Board of Councilmen v. Scott*, 101 Ky. 615; *Board of Council v. Rarick*, 102 Ky. 352; *Richmond v. Gibson* (Ky.), 46 S. W. Rep. 702; *Lantonia v. Hopkins* (Ky.), 47 S. W. Rep. 248; *Hughes v. Carl* (Ky.), 50 S. W. Rep. 852; *Ryan v. Central City* (Ky.), 54 S. W. Rep. 2; *Central Covington v. Park* (Ky.), 56 S. W. Rep. 650; *Louisville Bridge Co. v. Louisville* (Ky.), 58 S. W. Rep. 598. See *Henderson Bridge Co. v. Henderson* (Ky.),

36 S. W. Rep. 561, 173 U. S. 592. In *Newport v. Masonic Temple Assoc.* (Ky.), 56 S. W. Rep. 405, it is said that the section of the constitution as to exemptions was designed to narrow them, and to limit them to the objects expressly named. It must be fairly construed with a view to promote its purposes, and the exemptions allowed by it cannot be extended by implication.

³ *Shuck v. Lebanon* (Ky.), 53 S. W. Rep. 655.

⁴ *Louisville & N. R. Co. v. Barbourville* (Ky.), 48 S. W. Rep. 985.

⁵ *Louisville R. Co. v. Commonwealth* (Ky.), 49 S. W. Rep. 486.

bonded warehouses by the state board of valuation and assessment, instead of by the county assessor, as other property is assessed, is not unconstitutional, either as conferring an exclusive privilege or as violating the constitutional requirement that all property shall be taxed according to its value, or as not being uniform.¹ Statutes subjecting to taxation all the property, both tangible and intangible, of corporations, are not invalid for discrimination and non-uniformity, since natural persons are also taxed upon all their tangible and intangible property.² An act exempting from taxation property of a water company is in violation of the constitution exempting only public property used for public purposes.³ A statute exempting from taxation the real estate of a city board of trade is invalid, the service rendered not being "public," and being also gratuitous.⁴ So, also, a city council is prohibited from exempting property from taxation,⁵ nor can a town make a contract with a corporation exempting it from a tax on its franchise.⁶ And an exemption of insurance companies from taxation is repealed by the new constitution.⁷ As the constitution provides that "all property shall be taxed in proportion to its value unless exempted by this constitution," and exempts "institutions of purely public charity," it repeals statutes exempting the property and income of a masonic association "so long" as the same "shall be entirely devoted to masonic and charitable purposes."⁸ A statute postponing the payment of taxes due on distilled spirits in bonded warehouses until debts due the United States are paid does not violate the constitutional requirement of uniformity, distillers being required to pay interest on the deferred taxes.⁹ A statute providing for the taxation of the franchises of corporations was held to apply to all corporations, and therefore not unconstitutional as making a discrimination.¹⁰ But an ordinance fixing a certain

¹ *Commonwealth v. Taylor*, 101 Ky. 325.

² *American Express Co. v. Kentucky*, 166 U. S. 171.

³ *Clark v. Water Co.*, 90 Ky. 515.

⁴ *Barbour v. Louisville Board of Trade*, 82 Ky. 645.

⁵ *Middleboro v. Coal, etc. Bank (Ky.)*, 57 S. W. Rep. 497.

⁶ *South Covington & C. St. R. Co. v. Bellevue (Ky.)*, 49 S. W. Rep. 23.

⁷ *German Nat. Bank v. Louisville (Ky.)*, 54 S. W. Rep. 732.

⁸ *Newport v. Masonic Temple Assoc.*, 103 Ky. 592.

⁹ *Commonwealth v. Taylor*, 101 Ky. 325.

¹⁰ *Paducah St. R. Co. v. McCracken County (Ky.)*, 49 S. W. Rep. 178.

fee for a license to sell liquor on any street other than one named, and fixing a larger fee to sell on that street, is invalid to the extent that it discriminates against business conducted on that street, being to some extent special legislation.¹ A city council cannot enact local or special legislation to apply to a part of the territory, or to a special person within the limits of the city.² A statute providing that distilled spirits in bonded warehouses shall be assessed by the state board of valuation and assessment, instead of by the county assessor, is not a special law regulating the assessment of taxes.³ The fact that a statute imposes upon corporations, for failure to make report for taxation, a penalty different from that imposed upon an individual who fails to list his property for taxation, does not render it objectionable as special legislation.⁴ Nor is the statute requiring corporations to report to the auditor for the purpose of imposing upon them a franchise tax invalid because it applies only to corporations having some exclusive privilege or possessing intangible property.⁵

Louisiana. A provision that "taxation shall be equal and uniform throughout the state" applies only to state taxes.⁶ It does not require that all property shall be taxed, but only that such as is fixed upon for the purposes of revenue shall be taxed with equality and uniformity; and, therefore, a revenue law is not invalid because of its excluding from its scope a moderate amount of household furniture or of income.⁷ It will not preclude the legislature authorizing the taxation of callings, trades, and professions, or from classifying these for the purposes of taxation, provided that all who fall within the same

¹ Board of Council v. Renfro (Ky.), 58 S. W. Rep. 795.

² Board of Council v. Renfro (Ky.), 58 S. W. Rep. 795.

³ Commonwealth v. Taylor, 101 Ky. 325.

⁴ Louisville Ferry Co. v. Commonwealth (Ky.), 47 S. W. Rep. 877.

⁵ Louisville Tobacco Warehouse Co. v. Commonwealth (Ky.), 49 S. W. Rep. 1069.

⁶ Municipality v. Duncan, 2 La. An. 182; New Orleans v. Klein, 26 La.

An. 493; Louisiana v. Pillsbury, 105 U. S. 278. A later provision that

"Taxation shall be equal and uniform throughout the territorial limits of the authority levying the tax" includes both property taxes and license taxes: State v. O'Hara, 36 La. An. 95; Swords v. Baillio, 105 La. An. 328.

⁷ New Orleans v. Fourchy, 30 La. An. 910; New Orleans v. Davidson, 30 La. An. 554.

class are taxed alike.¹ The legislature has a broad discretion in the matter of classification,² and may make junk dealers a class by themselves,³ and may also make foreign insurance companies a separate class for heavier taxation than is imposed on home companies.⁴ It may fix a license fee of a certain amount upon all banks the capital of which is less than a specified sum.⁵ It may also graduate license fees for entertainments by the population of towns within which they are given.⁶ But it cannot, except by general law, exempt towns of less than 2,500 inhabitants from payment of parish licenses.⁷ A city cannot impose a license tax for revenue under the police power on those who bring garden produce of their own raising within it for sale.⁸ And the legislature cannot authorize a specific tax on property not of uniform value, as of cotton by the pound,⁹ nor, it seems, on drays, wagons, etc., proportioned to the number of animals drawing them.¹⁰

A statute providing that corporations, associations, partnerships, and individuals of foreign governments doing insurance business in the state, shall under certain circumstances pay a tax on their gross receipts creates a property tax, and, being confined to a particular class, violates the constitutional requirement that "all property shall be taxed in proportion to its value, to be ascertained as directed by law."¹¹ Under that

¹ *Municipality v. Dubois*, 10 La. An. 56; *New Orleans v. Bank*, 10 La. An. 735; *New Orleans v. Staiger*, 11 La. An. 68; *New Orleans v. South Bank*, 11 La. An. 41; *New Orleans v. Turpin*, 13 La. An. 56; *Merriman v. New Orleans*, 14 La. An. 318; *State v. Volkman*, 20 La. An. 585; *Hodgson v. New Orleans*, 21 La. An. 301; *New Orleans v. Home Ins. Co.*, 23 La. An. 449; *Boye v. Girardy*, 28 La. An. 717; *Walters v. Duke*, 31 La. An. 668; *Parish of Orleans v. Cochran*, 20 La. An. 373.

² See *State v. Lathrop*, 10 La. An. 398; *Insurance Co. v. New Orleans*, 1 Woods 85; *Sims v. Jackson*, 22 La. An. 440; *Wirtz v. Girardy*, 31 La. An. 381.

³ *New Orleans v. Kaufman*, 29 La. An. 283.

⁴ *Insurance Co. v. New Orleans*, 1 Woods 85. See *Hughes v. Cairo*, 92 Ill. 339; *Home Ins. Co. v. Sweigert*, 104 Ill. 653.

⁵ *State v. Traders' Bank*, 41 La. An. 329.

⁶ *State v. O'Hara*, 36 La. An. 93. Whether they can tax dealers in proportion to extent of dealings, see *East Feliciana v. Gurth*, 26 La. An. 140. And compare *Gatlin v. Tarboro*, 78 N. C. 119; *Boye v. Girardy*, 28 La. An. 220.

⁷ *Swords v. Baillio*, 105 La. 328.

⁸ *State v. Blaser*, 36 La. An. 363.

⁹ *Sims v. Jackson*, 22 La. An. 440. See *Livingston v. Albany*, 41 Ga. 21.

¹⁰ *State v. Endom*, 23 La. An. 663. See *Goodwin v. Savannah*, 53 Ga. 410.

¹¹ *Parker v. North British & M. Ins. Co.*, 42 La. An. 428.

requirement and the provision that "the general assembly have power to exempt from taxation property actually used for church, school, and charitable purposes," it is not within the power of the legislature to provide that, upon the payment of \$100 per annum to the state and a like sum to the city or municipality, every cotton or woolen mill then running or put in operation within a specified time should be exempt from further taxation. An act to that effect would either be an act for specific taxation, irrespective of valuation, or an act for an exemption, and in either case would be invalid.¹

The constitutional provision that "the valuation put upon property for the purposes of state taxation shall be taken as the proper valuation for the purposes of local taxation in every subdivision of the state" was not violated by a statute creating a levee district and authorizing the commissioners to levy a

¹ *Louisiana Cotton Manuf. Co. v. New Orleans*, 31 La. An. 440. Such an act cannot be sustained as an act for the commutation of taxes. The power to commute is forbidden in denying the power to exempt: *New Orleans v. Insurance Co.*, 28 La. An. 756; *New Orleans v. St. Charles, etc. Co.*, 23 La. An. 498; *New Orleans v. Sugar Shed Co.*, 35 La. An. 543. But it seems to be competent to provide that the payment of a specified sum annually shall be in lieu of any license tax: *Louisiana Lottery Co. v. New Orleans*, 24 La. An. 86. Where an unauthorized exemption is made to a water supply company the company is entitled to relief in respect to the consideration that was to be made for it: *New Orleans v. Water Works Co.*, 36 La. An. 432. See *Louisville Water Co. v. Clark*, 143 U. S. 1. An exemption of traders in goods of domestic manufacture from municipal license taxes was sustained in *New Orleans v. Dunbar*, 28 La. An. 722. A partial exemption from taxation by a corporate charter before the constitution was adopted is not affected by it: *Citizens' Bank v. Bouny*, 32 La. An. 239; *New Orleans v. Canal & Nav. Co.*, 26 La. An. 396. As to exemptions in general under the constitution, see *New Orleans v. Canal Bank*, 32 La. An. 104; *New Orleans v. National Bank*, 34 La. An. 892; *Morrison v. Larkin*, 26 La. An. 699; *New Orleans v. Insurance Co.*, 27 La. An. 519; *New Orleans v. Savings Co.*, 31 La. An. 826; *State v. Savings Co.*, 32 La. An. 1136; *Louisiana & N. O. Ice Co. v. Parker*, 42 La. An. 669; *Havana American Co. v. Board of Assessors*, 105 La. (29 S. Rep. 938). The words "exempt property" in statutes providing for a reduction therefor from the value of corporate shares in assessing such shares for taxation must be confined to the property enumerated in the constitution, and do not apply to federal, state, and city bonds held by the corporation and which are impliedly exempt from taxation: *First Nat. Bank v. Board of Reviewers*, 41 La. An. 181; *Parker v. Sun Ins. Co.*, 42 La. An. 1172.

tax on the "assessed valuation" of the property, for the act did not contemplate a new valuation and assessment.¹

Maine. The constitutional provision that "all taxes upon real and personal estate assessed by authority of this state shall be apportioned and assessed equally, according to the just value thereof," will not preclude the legislature empowering the city of Portland to exempt a water company from taxation for a term of years in consideration of its supplying the city with water free of cost.² But with this provision in force, it is not competent for the legislature to empower the municipal corporations of the state to exempt the property of manufacturing companies from taxation,³ or to authorize the levy of a tax for a general purpose upon a part only of the property within the municipality which levies it.⁴ A tax on a telegraph company of a percentage on the value of its line within the state, including poles, wires, instruments, etc., is not in violation of this provision; it being a tax not upon property, but on its use or on business of the company.⁵ Nor is the provision violated by a statute imposing a tax of a certain per cent. of the value upon inheritances and legacies, such charge not being a tax upon property, but an excise.⁶ The constitutional requirement of uniformity is satisfied by a tax upon the transmission of property by will or descent to strangers and collaterals, when it is uniform as to the entire class affected, although other classes are exempt.⁷ Legislation regulating the business of hawking and peddling by requiring those engaged in it to be licensed, and to pay proper fees, is within the police power of the state, and does not violate the requirement of equality and uniformity;⁸ nor is it objectionable as discriminating among citizens of the state in that it by exception permits one to peddle without license "the products of his own labor, or the labor of his family, any patent of his own invention or in which he has become interested by being a member of any

¹ *Hollingsworth v. Thompson*, 45 La. An. 222.

² *Portland v. Water Co.*, 67 Me. 135.

³ *Brewer Brick Co. v. Brewer*, 62 Me. 62. See *Farnsworth Co. v. Lisbon*, 62 Me. 451.

⁴ *Dyar v. Farmington*, 70 Me. 515. The tax was in aid of a railroad, and

was to be levied on the property of a village constituting part of a town.

⁵ *State v. Western Union, etc. Co.*, 73 Me. 518.

⁶ *State v. Hamlin*, 86 Me. 495.

⁷ *State v. Hamlin*, 86 Me. 495.

⁸ *State v. Montgomery*, 92 Me. 433.

firm, or stockholder in any corporation which has purchased the patent.”¹

Maryland. The constitution ordains that “the county commissioners shall exercise such powers and duties only as the legislature may from time to time prescribe; but such powers and duties and the tenure of office shall be uniform throughout the state.” Where the legislature made provision by law for the levy of a tax, by the county commissioners of a single county, for the support of public schools therein, the objection to this legislation, that it gave powers to and imposed duties on the commissioners of that county which were peculiar and exceptional, was held not to be well taken. It was not the purpose of the constitution that all local regulations should be the same in all parts of the state, or that every locality should levy taxes for the same objects, and no others, or that the county commissioners should exercise their uniform powers on precisely the same subjects. And this legislation was not to be regarded as giving exceptional authority, but as requiring a special exercise, in one county, of the uniform power to tax which the commissioners possessed in all the counties.²

The bill of rights declares that “every person in the state or person holding property therein ought to contribute his proportion of public taxes for the support of the government according to his actual worth in real or personal property.” It is not competent for the legislature, with this declaration in force, to levy on coal mining companies a specific tax of so much per ton on all coal transported by them for sale, and make this in lieu of all other taxation.³ And a statute providing that the county commissioners of a certain county shall pay to the commissioners of a certain town the amount of tax levied on the real estate in said town, to be used by the town commissioners for the repair of streets, and such other improvements as they deem proper, contravenes the bill of rights as appropriating the state and county tax of the town to the maintenance of the roads and making improvements, and exempting the town from the expense of the state and county

¹ *State v. Montgomery*, 92 Me. 433.

³ *State v. Cumberland, etc. R. Co.*,

² *Commissioners v. Alleghany* 40 Md. 22.
County, 20 Md. 449.

government.¹ But railroad companies may be taxed upon their gross receipts; such a tax being upon the franchise, and not upon property,² and a license tax may be required from every person engaged in packing or canning oysters.³ Corporate bonds secured by mortgage on property within the state may be taxed, although the debts of individuals, and the bonds of foreign corporations so secured, as well as non-interest bearing corporate bonds and the mortgage debts of homestead and building associations, are exempt.⁴ Corporate franchises are, as property, protected by the constitution from unequal or oppressive taxation.⁵

Massachusetts. The constitutional provision that the legislature shall only impose proportional and reasonable taxes is not violated by permitting a town, in which a state agricultural college is located, to levy a tax to pay an exceptional portion of the cost of erecting buildings for such college.⁶ Neither is it violated by laying an excise tax on life insurance companies doing business in the commonwealth, proportioned to the aggregate net value of policies in force.⁷ But the provision is violated if taxes are imposed upon one class of persons or property at a different rate from that which is applied to other classes, whether the discrimination is effected directly in the assessment, or indirectly through arbitrary and unequal methods of valuation. It is therefore incompetent to provide for the assessment of the reservoirs and dams of a water company on a basis which would only take its land into account, irrespective of the improvements upon it.⁸ And a statute authorizing the assessment of sewer charges on property is not valid as an assessment of a general tax where not proportionate or equal, in that it is on a particular class of property and requires, in determining the charges, the consideration of facts pertain-

¹ *County Com'rs v. Com'rs of Laurel*, 70 Md. 443.

² *State v. Philadelphia, etc. R. Co.*, 45 Md. 361; *State v. Northern Cent. R. Co.*, 44 Md. 131.

³ *Applegarth v. State*, 89 Md. 140.

⁴ *Simpson v. Hopkins*, 82 Md. 478.

⁵ *State v. Baltimore & O. R. Co.*, 48 Md. 49.

⁶ *Merrick v. Amherst*, 12 Allen 498.

⁷ *Connecticut Mut. L. Ins. Co. v. Commonwealth*, 133 Mass. 161.

⁸ *Cheshire v. County Com'rs*, 118 Mass. 386, citing *Portland Bank v. Apthorp*, 12 Mass. 252, *Commonwealth v. Savings Bank*, 5 Allen 428, and *Commonwealth v. Hamilton Manuf. Co.*, 12 Allen 298; *Fall River v. County Com'rs*, 125 Mass. 567.

ing to particular estates in their relation to the charges and to previous assessments.¹ It is not, however, necessary in order that taxes should be proportional, that the rate should be identical in all the municipal corporations of the state; and a statute providing that for purposes of taxation the funds of a certain charitable corporation should be apportioned among eight towns named, was held valid, although attacked by one of the towns in which the corporation did business as providing for an unreasonable and disproportional tax.² And an excise upon the transmitting and taking of property by will or descent is not unequal, and so unreasonable, by reason of an exemption of kindred in the direct line, or of a higher rate as to collaterals and strangers.³ A statute exempting from taxation wearing apparel, utensils, and household furniture not exceeding \$300 in value is constitutional.⁴

Michigan. The constitution ordains that "the legislature shall provide a uniform rate of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law,"⁵ and that "all assessments hereafter authorized shall be on property at its cash value." These provisions do not preclude the taxing of business as such, although the property employed in the business is also taxed,⁶ nor do they forbid the taxing of mortgages,⁷ or, as a police regulation, the taxing of dogs,⁸ or the taxing of the cars of an individual owner although the railroad companies running them are also taxed,⁹ or the assessment in the following year of school taxes provided by law, but which fail to be assessed at the proper time.¹⁰ But both of these requirements are violated by a statutory amendment providing that there shall be no deduction from the assets of banks or insurance com-

¹ *Sears v. Street Com'rs*, 173 Mass. 350.

² *Northampton v. Hampshire County Com'rs*, 145 Mass. 108.

³ *Minot v. Winthrop*, 162 Mass. 113.

⁴ *Day v. Lawrence*, 187 Mass. 371.

⁵ In *Williams v. Detroit*, 2 Mich. 560, this provision was held inoperative until some new rule in conformity therewith should be adopted by the legislature.

⁶ *Walcott v. People*, 17 Mich. 68;

Kitson v. Ann Arbor, 26 Mich. 325;

Youngblood v. Sexton, 32 Mich. 406.

⁷ *People v. Sanilac Supervisors*, 71 Mich. 16.

⁸ *Van Horn v. People*, 46 Mich. 183;

Hendrie v. Kalthoff, 48 Mich. 306;

Longyear v. Buck, 83 Mich. 236.

⁹ *Comstock v. Grand Rapids*, 54 Mich. 641.

¹⁰ *Wilcox v. Eagle T'p*, 81 Mich. 271.

panies for mortgages upon which they pay taxes.¹ A tax upon telegraph and telephone companies at a rate which is "the average rate of all taxes, raised for all purposes, local as well as state, during the previous year, is not within the uniform rule of taxation."² That rule is infringed by a statute which authorizes the surplus of highway fund levied for highway purposes upon a surveyed township to be expended for the benefit of another surveyed township (both comprising one township), not contiguous to it and not for highway purposes within the same assessing district.³ A statute taxing inheritances was held not to be a tax on property, but on the privilege of inheriting it, and hence not within the constitutional requirement of uniformity;⁴ and the fact that the act adopts the progressive rate in ascertaining the amount of inheritance taxes payable under it does not affect its validity on the ground of uniformity.⁵ The uniform rule of taxation was considered as not contravened by the statute requiring annual fees to be paid by public school teachers for the defraying of the expenses of teachers' institutes.⁶ It was, however, violated by a provision that in assessing corporations the value of the stock, less the real estate, should be assessed, as well as the cash value of all personal property less *bona fide* indebtedness, since such assessment would result in double taxation if there were no real estate and no debts, and since, also, the provision as to deducting debts is invalid because it does not conform to the usual method of deducting debts from credits only.⁷ The requirement of uniformity is not, however, violated by a statute plac-

¹ Standard Life, etc. Ins. Co. v. Detroit Assessors, 95 Mich. 466.

² Pingree v. Auditor-General, 120 Mich. 95.

³ Manistee Lumber Co. v. Springfield T'p, 92 Mich. 277.

⁴ Union Trust Co. v. Wayne Probate Judge, 125 Mich. 487.

⁵ Union Trust Co. v. Wayne Probate Judge, 125 Mich. 487. In Chambe v. Wayne Probate Judge, 100 Mich. 112, it was held that the uniformity rule was violated by the so-called inheritance tax law of 1893 — if the tax thereby imposed was to be regarded

as a tax upon property — because one section of the act imposed a five per cent. tax upon transfers of the value of \$500 or over, while another section provided that transfers to a certain class of persons, being those nearest of kin, should not be subject to the tax unless the transfers were of the value of \$5,000 or more, and then at the rate of one per cent.

⁶ Hammond v. Muskegon School Board, 109 Mich. 676.

⁷ Detroit Citizens' St. R. Co. v. Common Council, 125 Mich. 673.

ing a tax upon stock in foreign corporations held by residents, which is taxed as capital stock in the state where the corporation was organized, and exempting from taxation stock in domestic corporations, the capital stock of which is taxed in Michigan; it being competent for the legislature to place domestic corporations and foreign corporations in different classes for taxation.¹ Water rates paid to a city by consumers are in no sense taxes, being merely the price of a commodity; so they need not be uniform, or be based upon property values.² But a levy for laying water pipes in a street is a tax, and must be apportioned as such.³ Under the provision requiring property to be taxed at its cash value, manuscript books containing abstracts of land titles are not liable to taxation, as they have no intrinsic value, but are valuable only for the information they contain, and which is conveyed by consultation of extracts made therefrom.⁴

Minnesota. The constitution provides that "all taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state," and that "laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint companies, or otherwise, and also all real and personal property according to its true value in money." Equality and uniformity being required, it is not competent to impose a tax exclusively upon one subdivision of the state to pay a claim or indebtedness which is not peculiarly the debt of such subdivision, or to raise money for any purpose not peculiarly beneficial to such subdivision.⁵ A statute providing for the taxation of property unlawfully omitted from assessment and for re-assessment, where there has been a gross undervaluation, does not violate the provisions for equality and uniformity.⁶ The legislature has power to provide for the taxation

¹ *Bacon v. Board of Tax Com'rs*, (Mich.), 85 N. W. Rep. 307.

² *Jones v. Water Com'rs*, 34 Mich. 273; *Preston v. Water Com'rs*, 117 Mich. 589.

³ *Jones v. Water Com'rs*, 34 Mich. 273.

⁴ *Perry v. Big Rapids*, 67 Mich. 146.

⁵ *Sanborn v. Rice*, 9 Minn. 258. That the provision would include penalties for failure to list property for taxation, see *McCormick v. Fitch*, 14 Minn. 252.

⁶ *State v. Weyerhauser*, 68 Minn. 353.

of real property which has escaped taxation in previous years, without providing for the assessment of personalty of that class.¹ A statute exempting from taxation for five years the lands granted to aid in the construction of a certain railroad is repugnant to the constitutional requirement of uniformity, since the legislature cannot say what will be uniform taxation in the future.² And a statute providing for a system of commuted taxation—requiring a percentage of the gross receipts—of the property of railway companies and similar corporations, was unconstitutional until it was validated by the constitutional amendment of 1871.³ So, a statute providing a commuted system of taxation of mining property and products by the payment of a fixed sum per ton for all ore mined and shipped or disposed of, was held a violation of the requirement for equal taxation.⁴ A statute requiring claims for deduction in assessments on credits to be made in the first instance to the assessor does not infringe the provisions of the constitution requiring all taxes to be equal and prescribing what property is subject to taxation.⁵ The provision that taxes shall be as nearly equal as may be is not contravened by a statute requiring a county to pay to each of the judges of the district court therein a certain sum annually.⁶ A tax levied on land to collect the amounts the state has lent to farmers for seed grain is not unequal taxation, or taxation at all, but a statutory method of foreclosing a statutory lien for money borrowed from the state.⁷ A statute providing for deducting the total amount of the indebtedness of a corporation or association from its stock, as a basis of assessment, violates the provisions requiring equality, uniformity, and cash valuation.⁸ Those provisions are disobeyed by a city's contract with a corporation whereby the latter is to furnish water for city purposes, in consideration of the payment of

¹ *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526; *Redwood v. Winona, etc. Land Co.*, 40 Minn. 512.

² *State v. Duluth & I. R. R. Co.*, 77 Minn. 433.

³ *State v. Stearns*, 72 Minn. 200, followed in *State v. Duluth & I. R. R. Co.*, 77 Minn. 433. But see *Stearns v. Minnesota*, 179 U. S. 223; *Duluth & I. R. R. Co. v. St. Louis County*, 179 U. S. 302.

⁴ *State v. Lakeside Land Co.*, 71 Minn. 283.

⁵ *Arosin v. London & N. W. American Mortgage Co.*, 80 Minn. 277.

⁶ *Steiner v. Sullivan*, 74 Minn. 498.

⁷ *Deering & Co. v. Peterson*, 75 Minn. 118.

⁸ *State v. Duluth Gas, etc. Co.*, 76 Minn. 96.

taxes by the city on the water-works; for if a city could bind itself by such a contract, it would result in bartering away the taxing power.¹ An ordinance requiring the payment of a certain sum for a license to conduct the business of an employment office until the first day of January next following the date of the application, is void, the fee charged being neither uniform nor equal.² The requirement of a cash valuation avoids an ordinance taxing the conductors of "gift, fire, and bankrupt sales" two per cent. of the gross receipts of their sales.³ A statute authorizing rural highways to be laid out by assessing the entire cost upon lands lying within one mile thereof, according to benefits, violates the provision that all taxes shall be as nearly equal as may be; such a highway is not a local improvement within the meaning of the constitutional amendment exempting from the equality provision assessments for local improvements by municipal corporations.⁴ A statute requiring as a condition precedent to probate proceedings for the settlement of estates the payment to the county treasurer of specified sums arbitrarily prescribed without reference to the value of the estate in question is void as contrary to the clauses of the constitution requiring equality of taxation.⁵ And if decedents' estates are taxable under such a statute, an exemption of estates not greater than \$2,000 from any tax would violate the constitution as it formerly stood, it not being among the specified exemptions to the rule requiring all property to be assessed.⁶ Under the constitution in its present form the mandate of equality of taxation applies to inheritance taxes exactly as it does to taxes on property, except as otherwise expressly provided in the constitution, to the effect that "Such tax above such exempted sum may be uniform, or it may be graded or progressive; but shall not exceed a maximum tax of five per cent.;" and therefore a statute seeking to impose such a tax is unconstitutional for want of uniformity if it excludes from its operation real property and lays the tax upon successions to personalty alone, if it exempts from its operation persons and corporations whose property is by law ex-

¹ Little Falls Electric & Water Co. v. Little Falls, 74 Minn. 197.

² Moore v. St. Paul, 48 Minn. 331.

³ Minces v. Schoenig, 72 Minn. 528.

⁴ Sperry v. Flygare, 80 Minn. 325.

See Graham v. Conger, 85 Ky. 582; Washington Av. Case, 69 Pa. St. 352.

⁵ State v. Gorman, 40 Minn. 232.

⁶ State v. Gorman, 40 Minn. 232.

empt from taxation, and if it allows a larger exemption to lineal heirs than to collaterals, and does not lay the tax on the excess of the value of the property received above a uniform exempted sum.¹ It is not, however, invalid because it taxes collateral heirs at a higher rate than lineal heirs, for the constitution now expressly authorizes such graduation of the tax.² It has been held that the requirement that "taxes raised in this state shall be as nearly equal as may be," does not preclude the customary poll taxes and exemptions in respect to them.³

The constitution of Minnesota prohibits special legislation in all cases where general laws can be made applicable, and requires such general laws to be uniform in their application throughout the state. Under these provisions a statute to enforce the collection of delinquent taxes in counties in which certain conditions existed at the time therein specified was void.⁴

The constitution also provides that public property used exclusively for any public purposes shall be exempt from taxation. Pursuant to this provision a statute was passed exempting from taxation all public market houses; and it was held that a building erected for a public market by a private corporation, organized to erect the same, on land owned by the corporation, under a contract with the city whereby it secured a franchise for conducting the business for twenty-five years, was not exempt although declared by ordinance a public market and exempt.⁵

Mississippi. The constitutional provisions that "Taxation shall be equal and uniform throughout the state. All property shall be taxed in proportion to its value, to be ascertained as directed by law," and that "The property of all corporations for pecuniary profits shall be subject to taxation the same as that of individuals," do not avoid a statute requiring banks to pay a privilege tax varied in amount with reference to the capital stock or assets, such tax to be in lieu of all other taxes.⁶

¹ *Drew v. Tift*, 79 Minn. 175.

² *Drew v. Tift*, 79 Minn. 175.

³ *Faribault v. Misener*, 20 Minn. 396. As to equality in taxation, see, further, *Comer v. Folsom*, 13 Minn. 219.

⁴ *Duluth Banking Co. v. Koon* (Minn.), 84 N. W. Rep. 335.

⁵ *State v. Cooley*, 62 Minn. 183. See *Alleghany County v. McKeesport Diamond Market*, 123 Pa. St. 164.

⁶ *Vicksburg Bank v. Worrall*, 67 Miss. 47.

While the legislature has power to exempt property from taxation, whether the owners be corporations or natural persons,¹ property must be kept taxable, and contracts of exemption are not admissible.² A law exempting property belonging to a private corporation for pecuniary profits is void, unless it also exempts similar property when owned by individuals.³ However, a law exempting manufacturing plants from taxation applies alike to private and to corporate property, and is constitutional.⁴ Discrimination of rates between different kinds of property is forbidden;⁵ and the requirement of equality and uniformity is contravened by legislation dividing counties into five classes, and the lands of each class of counties into eight classes for taxable valuation, the assessor being required to determine into which class the land shall be placed, and then to assess it at the valuation of the class fixed by statute, while a further provision requires all lands in cities and towns and within two miles of them, and in villages where the valuation exceeds that of the first quality of land, to be assessed at their real value.⁶ The rule of uniformity was held not to be violated by a law prohibiting cities and towns from levying or collecting any tax on banks greater than a certain proportion of the state tax.⁷ And a docket fee imposed in a single judicial circuit only is void for want of equality and uniformity.⁸

¹ *Mississippi Mills v. Cook*, 56 Miss. 40; *Vicksburg Bank v. Worrall*, 67 Miss. 47.

² *Mississippi Mills v. Cook*, 56 Miss. 40.

³ *Adams v. Yazoo & M. V. R. Co.*, 77 Miss. 194; *Adams v. Tombigbee Mills* (Miss.), 29 South. Rep. 470.

⁴ *Adams v. Tombigbee Mills* (Miss.), 29 South. Rep. 470.

⁵ *Adams v. Mississippi State Bank*, 75 Miss. 701.

⁶ *Hawkins v. Mangrim* (Miss.), 28 South. Rep. 872.

⁷ *Adams v. Bank of Oxford* (Miss.), 29 South. Rep. 402. See *Adams v. Mississippi State Bank*, 75 Miss. 701. Legislation providing for a privilege tax to be paid by banks, varying the amount with reference to the capital

stock or assets, and declaring that such tax shall be in lieu of all other taxes, state, county, and municipal, upon the shares and assets of said banks, does not violate a constitutional provision that "no county shall be denied the right to raise, by special tax, money sufficient to pay for . . . conveniences for the people of the county, . . . provided the tax thus levied shall be a certain per cent. on all tax levied by the state," as this provision limits the right of the counties under it to levy of "a certain per cent.," and the subjects of taxation are to be determined by the legislature: *Vicksburg Bank v. Worrall*, 67 Miss. 47.

⁸ *Murray v. Lehman*, 61 Miss. 283.

The constitution of 1890, requiring taxation to be uniform and equal throughout the state, and property to be taxed in proportion to its value, and assessed under general laws and by uniform rules according to its true value, was held to be infringed by the statute of 1892 in regard to the assessment and collection of past-due delinquent taxes.¹

Under a constitutional provision that "domestic insurance companies shall not be required to pay a greater tax in the aggregate than is required to be paid by foreign insurance companies, except to the extent of the excess of the *ad valorem* tax over the privilege tax imposed upon such foreign insurance companies," a domestic insurance company which has paid a privilege tax is exempt from an *ad valorem* tax for state, county, and municipal purposes, where such *ad valorem* tax does not exceed the tax required of foreign companies.²

Missouri. In this state the constitution provides that "All taxes shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax," that all property shall be taxed in proportion to its value, and that "all taxes shall be levied and collected by a general law." These provisions do not preclude exemption from taxation, nor the division of things taxable into classes, and the imposition of taxes which, while bearing equally upon the different members of each class, bear unequally upon the classes in the aggregate.³ The taxation of income and salaries is not forbidden;⁴ the customary license fees may be imposed, if they are ratable;⁵ a statute classifying life insurance companies into "premium" and "assessment" companies, taxing the former and not the latter, is valid;⁶ express companies, which have no tangible property of their own, may be treated as a separate class from companies owning their own means of transportation, and may be taxed differently;⁷ and the business of brewing and selling beer may be taxed, while that of manufacturing and selling

¹ *Adams v. Tonella*, 70 Miss. 701.

² *Brennan v. Mississippi Home Ins. Co.*, 70 Miss. 531.

³ *Hanford v. Mass. Ben. Assoc.*, 122 Mo. 50.

⁴ *Glasgow v. Rowse*, 43 Mo. 479.

⁵ *Glasgow v. Rowse*, 43 Mo. 479; *St.*

Louis v. Green, 7 Mo. Ap. 468.

⁶ *Northwestern Masonic Aid Assoc. v. Waddill*, 138 Mo. 628.

⁷ *Pacific Express Co. v. Seibert*, 142 U. S. 339.

other intoxicants is exempted.¹ But the constitutional requirements of uniformity and of general legislation are violated by a statute which divides merchandise into a certain number of classes that are rearranged into groups, and which prohibits every person, firm or corporation employing more than fifteen persons from selling any goods or merchandise of more than one of the several classes or groups without paying a license fee of from \$300 to \$500, fixed by a board of commissioners for each city, and which is to be uniform only in the city.² The requirement of uniformity is also violated by a city charter requiring the levy of a poll tax for sanitary purposes in years of a general election, on every male resident of legal age, but exempting persons voting at such election.³ A water rate being in the nature of a toll and not a tax, higher charges to one person than to another are not prohibited by the uniformity clause of the constitution.⁴ Where a license fee imposed by a city ordinance is for the purpose of revenue, it is a tax, and must conform to the rule that taxes shall be uniform.⁵ Under that rule an ordinance requiring produce dealers to pay a license tax not required of other merchants is void, where the right to tax a produce dealer's business is solely because he is a merchant.⁶ A city ordinance levying a tax of one per cent. per annum upon the cost value of the stocks of merchants in the city is a property, not an occupation, tax, and is invalid because not uniform upon all the personal property of the city.⁷ But an ordinance providing for an occupation tax on merchants, which tax varies in amount according to stock in trade, is not objectionable for non-uniformity.⁸ An ordinance providing that dealers who have paid a merchant's license shall not be

¹State v. Bixman (Mo.), 62 S. W. Rep. 828.

²State v. Ashbrook, 154 Mo. 375. This legislation was obviously aimed at department stores.

³Kansas City v. Whipple, 136 Mo. 475. The levy mentioned in the text was also held objectionable because its purpose was rather to impose upon voters a penalty for not voting, than to raise revenue to maintain a necessary function of the government.

⁴St. Louis Brewing Assoc. v. St. Louis, 140 Mo. 419.

⁵St. Louis v. Spiegel, 75 Mo. 145, 90 Mo. 587. If a vessel owned by a non-resident is taxed like vessels owned by residents, it is entitled to the same reduction from the tax: St. Louis v. Consolidated Coal Co., 113 Mo. 83.

⁶Kansas City v. Grush, 151 Mo. 128.

⁷Brookfield v. Tooev, 141 Mo. 619.

⁸Aurora v. McGannon, 138 Mo. 38.

required to weigh coal, corn, and hay when sold in quantities less than fifteen bushels as required on sales by persons who are not regular dealers, is not a discrimination in taxation as prohibited by the constitutional provision for uniformity, the tax being uniform on all in the same class.¹ And as a license fee, required by a city ordinance to be paid by boats entering the harbor is a tax within the uniformity clause of the constitution, a provision in the ordinance that a reduction of forty per cent. from the regular rates of license shall be allowed to vessels owned by residents of the city, boats which have been taxed the same as those of resident owners are entitled to the same reduction in the rates of license without regard to the owner's residence.² A municipality can only tax within its own limits,³ and its taxation must be uniform as respects the subjects of taxation within it.⁴

A statute imposing upon the estates of deceased persons a property tax in addition to that levied upon them and all other like property for the same year was held void under the provision of the constitution that all property shall be taxed in proportion to its value.⁵ A later statute, imposing an inheritance tax, and apportioning the tax according to the value of the property inherited, has, however, been held not void for want of uniformity as imposing a burden on certain property not imposed on similar property; the tax not being a property tax but one on successions.⁶ And, as it does not impose a property tax, such later statute cannot be considered as infringing the rule of uniformity, although it exempts all lineals, husband or wife, and adopted children, while taxing collateral relations.⁷ The charge for inspection under a statute requiring the inspection of beer and exacting a fee therefor was held not to be a

¹ *St. Charles v. Elsner*, 155 Mo. 671.

² *St. Louis v. Consolidated Coal Co.*, 113 Mo. 83.

³ *Wells v. Weston*, 22 Mo. 384. See *Chicago & A. R. Co. v. Lamkin*, 97 Mo. 496.

⁴ *Adams v. Lindell*, 5 Mo. Ap. 197. See *American Union Express Co. v. St. Joseph*, 66 Mo. 675. And as to equality of taxation in general, see *State v. Hannibal, etc. R. Co.*, 75 Mo. 208.

⁵ *State v. Switzler*, 143 Mo. 287. The mere calling of a tax in a statute a "succession tax" does not make it such. It may in fact be a property tax; and if its effect and operation are identical with a property tax, it will be held to be such: *Ibid.*

⁶ *State v. Henderson*, 160 Mo. 190. The former statute was held defective on the same ground: *State v. Switzler*, 143 Mo. 287.

⁷ *State v. Henderson*, 160 Mo. 190.

property tax, and hence not objectionable as not being uniform, or as not being levied according to value.¹

The constitution of Missouri also provides that "All laws exempting property from taxation other than the property above enumerated shall be void." This, it is held, "refers to affirmative exemptions, not to those which do not in terms exempt certain property. While it is the clear duty of the legislature to see that no class of property in this state shall escape taxation, still unless the legislature exercises its legislative functions, and subjects certain property to taxation, it is evident that the constitutional provision above quoted cannot, because of such lack of legislation, become self-enforceive."² This provision, and another enumerating property to be exempted, as also similar provisions in an earlier constitution, are prospective in their operation, and do not repeal a prior special law exempting the property of a private corporation from taxation.³

Under the express power given by the constitution of Missouri to tax all railroad corporations for school purposes, it is competent for the legislature of that state to classify such property for purposes of taxation.⁴

Montana. The principles of uniformity and equality prescribed by the constitution of this state are not violated by the statute providing for a tax upon "all property" passing by will or intestacy; such charge not being a tax upon property, but upon the right to receive inheritances;⁵ and the fact that estates of a certain sum and less are exempted does not avoid the tax as being unequal.⁶ The constitutional provision requiring the assessment and levy of taxes to be uniform does not apply to license taxes, for example upon persons carrying on the steam-laundry business.⁷

¹ *State v. Bixman* (Mo.), 62 S. W. Rep. 828.

² *Kansas City v. Mercantile Mut. B. & L. Assoc.*, 145 Mo. 50.

³ *State v. St. Joseph's Convent*, 116 Mo. 575.

⁴ *Chicago & A. R. Co. v. Lamkin*, 97 Mo. 496. The Missouri statute regulating the levy of taxes on railroad property by the average rate levied for school purposes by the

local boards does not contravene the state or federal constitution: *State v. Missouri Pac. R. Co.*, 92 Mo. 137.

⁵ *Gelsthorpe v. Furnell*, 20 Mont. 299. The tax, however, is held uniform: *Ibid.*

⁶ *Gelsthorpe v. Furnell*, 20 Mont. 299.

⁷ *State v. French*, 17 Mont. 54.

A further provision in the constitution that "no company or corporation formed under the laws of any other country, state, or territory, shall have . . . any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state," is not violated by a statute imposing a license on banks, although national banks cannot be subjected to such licenses.¹

Nebraska. The constitution of this state ordains that "the legislature shall provide such revenue as may be needful by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property, the value to be ascertained in such manner as the legislature shall direct," and that "the legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever." Under these provisions public revenues must be so imposed that every person or corporation shall pay a tax proportionate to the value of property or franchise;² the legislature cannot discriminate in any manner whatever between taxpayers;³ the valuation of property for the purpose of raising revenue must be uniform,⁴ and so must the rate,⁵ but the rule of uniformity is not violated if all the property in a tax district is uniformly assessed at one-fourth instead of its true cash value.⁶ Nor is that rule infringed by an act requiring the several counties of the state to pay for the maintenance of insane persons having a settlement in the counties from which they are sent.⁷ Legislation is unconstitutional in so far as it attempts to exempt property of insurance companies from taxa-

¹State v. Thomas Cruse Savings Bank, 21 Mont. 50.

²State v. Poynter, 59 Neb. 417.

³State v. Poynter, 59 Neb. 417.

⁴State v. Osborn (Neb.), 83 N. W. Rep. 357.

⁵High School Dist. v. Lancaster County (Neb.), 82 N. W. Rep. 380.

⁶State v. Osborn (Neb.), 83 N. W.

Rep. 357. The requirement of equality in respect to local taxes is complied with if duly observed as to each jurisdiction for whose use the particular taxes are laid: Pleuler v. State, 11 Neb. 547. See, further, Miller v. Hurford, 11 Neb. 377, 13 Neb. 13.

⁷State v. Douglas County Com'rs, 18 Neb. 601.

tion, or to relieve such companies, in consideration of certain fees, from the payment of taxes which other corporations are required to pay;¹ and a statute restricting the foreclosure of tax liens by counties to cases where the amount due on the tax certificate exceeds a certain sum is void.² It is not incompetent to exempt the capital stock of a corporation from taxation when it is all invested in real estate,³ and a statute authorizing a road tax not exceeding a certain sum to the acre, to be paid in labor at option, is not void on grounds of inequality because of not providing for the assessment of the tax against city lots and other property.⁴

The constitution of Nebraska also provides that the legislature "shall have power to tax peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, telegraph, and express interests or business, and vendors of patents, in such manner as it shall direct by general law uniform as to the class upon which it operates." This, it has been held, will not preclude the taxation of subjects other than those specified; and a tax upon parties in respect of the commencement of a suit is not unconstitutional.⁵

Nevada. The constitution requires "A uniform and equal rate of taxation." This is not infringed by the taxation of moneys lent by a savings bank, secured by mortgage, and of the property securing the loan.⁶ And as all property is to be assessed at its actual cash value, the fact that a statute provides that different kinds of property shall be assessed by different assessors does not make it conflict with the constitutional requirement, since the cash value may as well be determined by several men and boards as by one.⁷ A constitutional provision for the taxation of property by value does not exclude privilege taxes;⁸ and another provision forbidding special laws for the assessment and collection of taxes is not disobeyed by an act creating a state board of assessors and equalization to

¹ *State v. Poynter*, 59 Neb. 417.

² *Lancaster County v. Rush*, 35 Neb. 119.

³ *Mortensen v. West Point Manuf. Co.*, 12 Neb. 197.

⁴ *Burlington, etc. Co. v. Lancaster*

County, 40 Neb. 293. Compare *Gunnison v. Owen*, 7 Colo. 467.

⁵ *State v. County Com'rs*, 4 Neb. 537.

⁶ *State v. Carson City Savings Bank*, 17 Nev. 146.

⁷ *Sawyer v. Doolley*, 21 Nev. 390.

⁸ *Robinson, Ex parte*, 12 Nev. 263.

assess all railroads, and the rolling stock and side tracks of all railroads; such act being simply an exercise of the right of the legislature to classify property for the purposes of taxation and being, as applicable to all railroads in the state, a general law.¹ Under a clause of the constitution providing for the taxation of all property except "such as may be exempted therein for the purposes therein enumerated, the exemption of mortgages, not being for any of the enumerated purposes, is invalid.² Another constitutional provision requiring corporations to be taxed the same as individuals is not contravened by a statute providing that all railroads, however owned, are to be assessed by the state board, and all other property by the county assessors.³

New Hampshire. By the constitution the legislature is given power "to impose and levy proportional and reasonable assessments, rates, and taxes upon all the inhabitants and residents within the said state, and upon the estates within the same, to be issued and disposed of," etc., and by the Bill of Rights every member of the community "is bound to contribute his share to the expense of" the state. Equality and justice being, therefore, the foundation of all constitutional taxation, a statute founded on any other principle cannot be upheld. So a tax of two per cent. on the gross receipts of express companies doing business upon railroads, or in lieu thereof of five dollars per mile for the number of miles of railroad over which the business is done—thus impliedly exempting from its scope the business not done upon railroads,—is not valid because not founded in equality and justice.⁴ The provisions above recited are contravened by the exception, from the otherwise general inheritance tax law, of legacies to husband or wife, children or grandchildren, of the person who died last seized.⁵ And a rule for the computation of taxes which produces a larger sum on certain property than on any similar property is contrary to the constitutional rule requiring equality of taxation.⁶ But a statute limiting

¹ *Sawyer v. Dooley*, 21 Nev. 390.

⁵ *Curry v. Spencer*, 61 N. H. 624.

² *State v. Carson City Savings Bank*, 17 Nev. 146.

⁶ *Boston C. & M. R. Co. v. State*, 63 N. H. 571; *Amoskeag Manuf. Co. v. Manchester* (N. H.), 47 Atl. Rep. 74.

³ *Sawyer v. Dooley*, 21 Nev. 390.

⁴ *State v. United States & C. Express Co.*, 60 N. H. 219.

the rate of taxation of deposits in savings banks was held not to be unconstitutional; the court declaring that the savings-bank tax is an anomaly, resting on peculiar grounds of public policy, and is universally understood to have acquired the position of an exception to the constitutional rule of equality."¹

A statute requiring a town to pay the expenses of a board of police commissioners appointed by the governor is not objectionable as subjecting the town to unequal and unreasonable expense, since it only requires the town to pay its proportional share of the total expenses of policing the state by requiring the payment of the officers within its own limits.²

New Jersey. The constitutional provision that "property shall be assessed for taxes under general laws and by uniform rules, according to its true value," does not require all property to be taxed, but leaves untrammelled the legislative power of selecting the subjects of taxation. It is not infringed by the taxation of bank shares when shares in other corporations are exempted, or by the fact that the shares are rated differently in the different townships, unless the different rating comes from some system of valuation designed to produce it.³ Nor is that provision violated by a law for the taxation of property generally and equally, but which provides that a mortgage or debt secured thereby shall not be taxed in any case unless a deduction therefor is claimed by the owner of the land and allowed by the assessor, and that when taxed it shall be in the township or city where the mortgaged premises are situated.⁴ The legislature may create classes on a substantial basis for the convenience of levying taxes according to the true value of the property,⁵ and the right to discriminate among the various classes of property for the purposes of taxation is thoroughly established;⁶ but the constitution requires that all members of the class selected for taxation shall be included in the taxing law; that the rule applied thereto shall be uniform as to the

¹ *Somersworth Savings Bank v. See Trustees v. Trenton*, 30 N. J. Eq. Somersworth, 68 N. H. 402, citing 667.

Boston C. & M. R. Co. v. State, 62 N. H. 648. ⁴ *State v. Bunyon*, 41 N. J. L. 98.

² *Gooch v. Exeter* (N. H.), 48 Atl. Rep. 1100. ⁵ *Fidelity Trust Co. v. Vogt* (N. J.),

³ *Stratton v. Collins*, 43 N. J. L. 562. (N. J.), 48 Atl. Rep. 146.

⁶ *State Board v. Central R. Co.*

whole class, and that the assessment shall be made at the true value of the property constituting the class.¹ The constitutional requirement is not disobeyed by a statute merely because such statute provides one method of assessment for shares of resident stockholders in banks and another for those of non-residents, where there is no substantial difference in the taxation of these shares.² Realty and personalty may be placed in different classes for taxation; and therefore a statute which provides for the taxation of all lands and real estate mortgaged to or owned by any officer of the state in his official capacity, and held in trust for the benefit of any person, cannot be objected to as not a general law on the ground that it is confined to real estate and does not extend to all funds held in the manner authorized in the act.³ On the other hand, a statute providing for the taxation of real and personal property held in trust by the court of chancery was held unconstitutional because it did not apply to like property held in trust by other courts of the state.⁴ A statute providing that "such taxes or assessments as may be lawfully levied, imposed, or assessed by any board of trustees of any village or other municipal corporation, governed by a board of trustees, shall be and remain a first and paramount lien upon the lands or real estate, on account of which the same are so levied or assessed until paid," is unconstitutional, the classification by the mere mode of government being illusory and unsubstantial.⁵ The adoption of the constitutional provision above quoted abrogated a statute which did not permit a mortgager to deduct the amount of his mortgage from his taxable property in counties and cities,⁶ and it also annulled an act directing the commissioners of appeal to reduce the valuation of an individual's property for the purpose of taxation to the sum specified by the owner under oath.⁷ It also repealed a previous special law authorizing the taxation of certain personal property "where found."⁸ A statute is invalid which

¹ *Fidelity Trust Co. v. Vogt* (N. J.), 48 Atl. Rep. 580.

² *Mechanics' Nat. Bank v. Baker* (N. J.), 46 Atl. Rep. 586.

³ *Chancellor v. Elizabeth* (N. J.), 47 Atl. Rep. 454.

⁴ *Chancellor v. Elizabeth*, 64 N. J. L. 502.

⁵ *Burnet v. Dean* (N. J.), 49 Atl. Rep. 503.

⁶ *State v. Trenton*, 47 N. J. L. 79.

⁷ *Blume v. Bowes* (N. J.), 47 Atl. Rep. 487.

⁸ *State v. Love*, 46 N. J. L. 132.

attempts to substitute "as the correct standard of value," for railroad property, "the assessed value of the real estate of persons other than railroad and canal corporations," instead of the true value of the railroad property itself, which is the true basis of a constitutional assessment thereof.¹ The provision is fatal to a conflicting provision in a special tax-law for a municipality,² but it does not interdict an act that authorizes towns to issue bonds for the purpose of raising money to pay certain bonds and improvement certificates.³ The constitutional provision requiring property to be assessed for taxation under general laws impliedly requires exemptions from taxation to be granted by general laws.⁴ Where there is a substantial basis for classification the legislature may exempt certain property from taxation on account of the peculiar use to which it is devoted.⁵ But an exemption from taxation, which a statute purports to secure, for all the property of savings banks, except realty bought under foreclosure, is not the exemption of an entire class of property, and, therefore, it is contrary to the constitutional paragraph mentioned and is void.⁶ The constitution of New Jersey, relating to uniform taxation according to true value, does not refer to license fees for the purpose of transacting business;⁷ and a tax laid, though with reference to stock, upon a company for exercising corporate franchises is a license tax, not necessary to be uniform.⁸

New York. In this state there is no constitutional guaranty that taxation shall be just and equal, although a law plainly departing from the principle of equality in the distribution of public burdens will be justly obnoxious as contrary to natural equity, and as practical confiscation; but the remedy must ordinarily be found in an appeal to the justice of the legislature.⁹ Laws which modify the general laws for the collection of

¹ *Williams v. State Board of Assessors*, 51 N. J. L. 512.

² *State v. Newark*, 40 N. J. L. 558.

³ *Herrman v. Guttenberg*, 62 N. J. L. 695.

⁴ *Newark v. Mount Pleasant Cemetery Co.*, 58 N. J. L. 168.

⁵ *Fidelity Trust Co. v. Vogt* (N. J.), 48 Atl. Rep. 580.

⁶ *State v. Richards*, 52 N. J. L. 156.

⁷ *Johnson v. Asbury Park*, 58 N. J. L. 604; *State Board v. Central R. Co.*, 48 N. J. L. 347; *Pipe Line Co. v. Berry*, 53 N. J. L. 212; *Standard Underground Cable Co. v. Attorney-General*, 46 N. J. Eq. 270.

⁸ *Standard Underground Cable Co. v. Attorney-General*, 46 N. J. Eq. 270.

⁹ *Genet v. Brooklyn*, 99 N. Y. 296.

state taxes by devolving on counties the duty of selling, and charging them with unpaid taxes, are constitutional,¹ and so is a law providing different times for assessments for state taxes.² Where an application to reduce an assessment on account of the indebtedness of the person assessed had been denied on the ground that certain bank stock included in the assessment was valued at sixty per cent. of its par value, when it should have been valued at fifty per cent. above par, the assessment of such stock in the hands of other stockholders being, however, left at sixty per cent., it was held that such assessment was invalid for want of uniformity.³

North Carolina. The constitution requires township officers to assess all taxable property within their townships respectively. Under this provision they may tax the land of a railroad company, even though the state authorities, in taxing the franchise of the company, have taken the land into account.⁴ The provision that "all taxes levied by any county, town, or township shall be uniform and *ad valorem* upon all property in the same, except property exempted by this constitution," overrules a conflicting provision in a city charter, and taxes must be levied on real as well as personal property.⁵ The omission of the stock in trade of merchants from taxation, when real estate is taxed, cannot be defended by showing that, in another way, merchants are taxed to make up the deficiency. It is not for city authorities to substitute their judgment for the statutory requirement.⁶ Solvent credits and stocks may be taxed under this provision, but must be taxed *ad valorem*.⁷ The statutory requirement that citizens shall labor on

¹ *People v. Ulster County Supervisors*, 36 Hun 491.

² *People v. Commissioners*, 91 N. Y. 593. See *Thomas v. Gay*, 169 U. S. 264; *Nelson Lumber Co. v. Loraine*, 22 Fed. Rep. 54; *State v. Lindell Hotel Co.*, 9 Mo. App. 450; *Gay v. Thomas*, 5 Okl. 1.

³ *People v. Fraser*, 74 Hun 282.

⁴ *Wilmington, etc. R. Co. v. Brunswick County*, 72 N. C. 10. See *Bridge Co. v. New Hanover County*, 72 N. C. 15; *Richmond, etc. R. Co. v. Orange*

County, 74 N. C. 506; *Same v. Brogden*, 74 N. C. 707. That the assessment cannot be made by city authorities, see *Carolina Cent. R. Co. v. Wilmington*, 72 N. C. 73; *Cobb v. Elizabeth City*, 75 N. C. 1.

⁵ *Cobb v. Elizabeth City*, 75 N. C. 1. See *Young v. Henderson*, 76 N. C. 420.

⁶ *London v. Wilmington*, 78 N. C. 109.

⁷ *Wilson v. Charlotte*, 74 N. C. 748. A tax of \$1 on a party to any civil action is not forbidden by this pro-

the roads is not a tax, and therefore unconstitutional, because it is not levied *ad valorem*, but a duty required to be rendered the state without compensation.¹ It has been held that the legislature may, without violating the principle of equal taxation, discriminate between the different counties of the state as to the times at which the people shall pay their taxes.² An ordinance imposing a privilege tax on tobacco buyers is not in conflict with the constitutional requirement of uniformity.³ Nor is that requirement violated by a statute imposing on hotel-keepers a license tax graduated in amount by the gross receipts, and exempting those whose yearly receipts are less than \$1,000.⁴ A tax on traders may be proportioned to the sales during the preceding quarter of the year, and it may be different on wholesale from what it is on retail dealers, or on persons in different kinds of business; it being only required that the taxation shall be uniform as to all subjects in the same class.⁵ A statute providing that every merchant or other dealer who buys and sells goods not specially taxed elsewhere in the act shall, in addition to his *ad valorem* tax on his stock, pay a license tax "on the total amount of his purchases in or out of the state, except purchases of farm products from the producer," is not repugnant to the constitution, but is expressly authorized by a provision that the general assembly may tax trades, professions, and franchises.⁶ But a statute requiring "emigrant agents" to pay a large license fee before they can hire laborers in certain counties of the state to be

vision: *Hewlett v. Nutt*, 79 N. C. 263. For cases of peculiar charter contracts, see *Richmond, etc. R. Co. v. Orange County*, 74 N. C. 506; *Same v. Brogden*, 74 N. C. 707; *North Carolina R. Co. v. Alamance*, 77 N. C. 4.

¹ *State v. Sharp*, 125 N. C. 628. A statute levying a road tax on property in a certain county was held void for failing to observe the constitutional equation between the tax on the poll and the tax on property; *State v. Godwin*, 123 N. C. 697. A statute exempting from working on the public roads the officers, servants, etc., of a certain railroad is not

unconstitutional as an attempt to grant a special privilege to particular persons: *State v. Womble*, 112 N. C. 682.

² *State v. Jones*, 121 N. C. 616.

³ *State v. Irvin*, 126 N. C. 989, citing *Rosenbaum v. Newbern*, 118 N. C. 83.

⁴ *Cobb v. Commissioners*, 122 N. C. 307.

⁵ *Gatlin v. Tarboro*, 78 N. C. 119. See *Worth v. Petersburg, etc. R. Co.*, 89 N. C. 301; *State v. Carter* (N. C.), 40 S. E. Rep. 11.

⁶ *State v. French*, 109 N. C. 722.

employed outside of the state, is, if considered as an exercise of the state's taxing power, in contravention of the constitutional provision last quoted, and is also void for want of uniformity.¹ It is not competent to tax some railroad companies upon gross receipts and others upon capital stock, since this cannot be uniform.² The requirement of uniformity in taxation applies to local taxes as well as to others,³ but it does not invalidate a municipal ordinance imposing, under legislative authority, a tax of a specified amount on every railroad company within the corporate limits.⁴

A statute fixing a property and a capitation tax is invalid if it fails to observe the constitutional ratio between them.⁵

North Dakota. The constitution of this state requires that "all laws of a general nature shall have a uniform operation," and that "laws shall be passed taxing by a uniform rule all property according to its true value in money." It also prohibits the legislature from passing local or special laws for the assessment or collection of taxes. These provisions, it has been held, are not violated by a statute providing that grain in any elevator, etc., shall be assessed and taxed in the name of the person or firm owning or operating such elevator.⁶ The former of the two provisions refers exclusively to general taxation, and has no reference to local assessments.⁷

It is also provided by the constitution of this state that "The legislative assembly shall, by a general law, exempt from taxation property used exclusively for school, religious, cemetery, or charitable purposes." This provision, it is held, does not of its own force operate to exempt any property from taxation. It is not self-executing. And it is not infringed by a statute of exemptions that is narrow in its terms, or that limits the exemption of real estate used for charitable purposes to such as is devoted to purely public uses, and then only to such as belongs to an "institution."⁸ Real estate belonging to an in-

¹ *State v. Moore*, 113 N. C. 697.

² *Worth v. Wilmington, etc. R. Co.*, 89 N. C. 291.

³ *French v. Wilmington*, 75 N. C. 477; *Weinstein v. Newbern*, 71 N. C. 535; *Cobb v. Elizabeth City*, 75 N. C. 1; *Young v. Henderson*, 76 N. C. 420.

⁴ *Richmond & D. R. Co. v. Reidsville*, 101 N. C. 404.

⁵ *Russell v. Ayer*, 120 N. C. 180.

⁶ *Minneapolis & N. E. R. Co. v. Traill County*, 9 N. D. 213.

⁷ *Rolph v. Fargo*, 7 N. D. 640.

⁸ *Engstad v. Grand Forks County* (N. D.), 84 N. W. Rep. 577.

dividual cannot under any circumstances be exempt under the Revised Code of 1899, section 1180.¹

Ohio. The constitution provides that "laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, and also all real and personal property according to its true value in money; but burying grounds, public school-houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value \$200 for each individual may, by general laws, be exempted from taxation," etc. This provision is mandatory, and directed to the legislature, but no power exists to compel that body to act; and the only purpose such clause can serve is to limit the power of the legislature when it does act by forbidding it to pass laws taxing one class of property by one rule and another class by another rule.² The provision renders it imperative that all the property of which exemption is not permitted by it shall be taxed, and precludes any other exemptions than those indicated.³ But it does not avoid a statute which allows a deduction of liabilities from claims or demands in assessing the latter for taxation;⁴ it being held that the term "credits," as used in the constitutional provision, means the excess of the sum of all legal claims and demands due a person, over and above the sum of the legal *bona fide* debts due him.⁵ On the other hand,

¹ Engstad v. Grand Forks County (N. D.), 84 N. W. Rep. 577.

² McCurdy v. Prugh, 59 Ohio St. 465.

³ Zanesville v. Richards, 5 Ohio St. 590. See Hill v. Higdon, 5 Ohio St. 243; Western Union Tel. Co. v. Meyer, 28 Ohio St. 521; Fields v. Commissioners, 36 Ohio St. 476.

⁴ Fayette County Treasurer v. People's, etc. Bank, 47 Ohio St. 503; Hubbard v. Brush, 61 Ohio St. 252. In Bank of Columbus v. Hines, 3 Ohio St. 1, followed by Latimer v. Morgan, 6 Ohio St. 279, it was held that the constitutional provision in regard to exemptions precluded a taxpayer's being allowed to deduct his debts

from the value of his property, this being inconsistent with the requirement that all property should be taxed; but immediately after these cases were decided the statute recited in the text was enacted, and this legislative definition, acquiesced in for many years, has in the case of Hubbard v. Brush, *supra*, been decided to accord with the constitution.

⁵ Fayette County Treasurer v. People's, etc. Bank, 47 Ohio St. 503. This case holds that allowing to banks deductions for their liabilities from their claims or demands does not contravene another provision of the Ohio constitution which requires the

the provision is contravened by an act authorizing the deduction of any liabilities of banks from their cash "in possession or transit."¹ But it does not preclude the taxing of business as such, the licensing of stores, etc.² Nor does it preclude the taxing of the right to receive or succeed to property by devise or inheritance, this not being a tax on property, but on the right or privilege to receive or succeed.³ Nor is that provision contravened by the method adopted in the Revised Statutes of Ohio for estimating the taxable value of property converted during the year into non-taxable securities,⁴ or by the statute providing for the taxation of the intangible property of express, telegraph, and telephone companies doing business within the state upon the basis of such proportion of their capital stock as the length of the lines operated within the state bears to the entire length of the lines.⁵ But the requirement of taxation according to the true value in money is violated by a statute requiring all credits payable in money to be listed for taxation at their face value.⁶ The constitutional rule of equality requires that the rate shall be uniform on all property subject to taxation within the taxing district.⁷

In raising revenue all property must be taxed except such as is exempted under the constitution; but this does not prohibit the legislature from procuring general revenues from sources other than taxation upon property — for example, from water rents.⁸

A constitutional provision, requiring laws of a general nature to have a uniform operation throughout the state, is complied with by a law of a general nature that is in full force in every part of the state.⁹

general assembly to provide by law for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues, of every description (without deduction), of all banks, so that all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals.

¹ *Fayette County Treasurer v. People's, etc. Bank*, 47 Ohio St. 503.

² *Baker v. Cincinnati*, 11 Ohio St. 534.

³ *State v. Ferris*, 53 Ohio St. 314.

⁴ *Shotwell v. Moore*, 45 Ohio St. 632.

⁵ *State v. Jones*, 51 Ohio St. 492.

⁶ *McCurdy v. Prugh*, 59 Ohio St. 465.

⁷ *New York, L. E. & W. R. Co. v. Commissioners*, 48 Ohio St. 249.

⁸ *Alter v. Cincinnati*, 56 Ohio St. 47.

⁹ *State v. Ferris*, 53 Ohio St. 314.

The Ohio Bill of Rights, declaring that government is instituted for the equal protection and benefit of all the people, avoids a statute which imposes a direct inheritance tax, exempting the right to receive or succeed to estates not exceeding \$20,000 in value, and taxing at a higher rate the right to receive or succeed to estates of larger value than to estates of smaller value.¹ But an act imposing a collateral inheritance tax is not unconstitutional because of its discriminations among collateral kindred.²

The constitution furnishes the rule for local as well as general taxation,³ and it forbids commutations for taxes, equally with direct exemptions.⁴ But the privilege of a foreign corporation to do business in the state is not property, and such corporation may be assessed for taxation by such other standard than an estimate of property by value as the legislature may prescribe.⁵

Oklahoma. The organic act of this territory forbids "any unequal discrimination to be made in taxing different kinds of property; but all property subject to taxation shall be taxed in proportion to its value." This is not contravened by tax laws classifying personal property as one class and real estate as another, even though there are some persons who own personally only, and others who own both classes, or authorizing the assessment of different classes of property at different dates, and even of the same classes of property in different localities at different dates; nor can mere difference of statutory procedure in respect to property assessed within organized counties and property assessed in unorganized counties, attached to the former for taxing purposes, be regarded as creating discriminations.⁶

¹ *State v. Ferris*, 53 Ohio St. 314.

² *Hagerty v. State*, 55 Ohio St. 613.

³ *Zanesville v. Richards*, 5 Ohio St. 590; *Cincinnati, L. & N. R. Co. v. Cincinnati*, 62 Ohio St. 465.

⁴ *Zanesville v. Richards*, 5 Ohio St. 590. See *Fields v. Commissioners*, 36 Ohio St. 476; *New Orleans v. Insurance Co.*, 28 La. An. 756; *Louisiana Cotton Manuf. Co. v. New Orleans*,

31 La. An. 440; *Louisiana Lottery Co. v. New Orleans*, 24 La. An. 86; *Ide v. Finneran*, 29 Kan. 569; *Illinois Central R. Co. v. McLean County*, 17 Ill. 291; *Daughdrill v. Insurance Co.*, 31 Ala. 91.

⁵ *Western Union Tel. Co. v. Mayer*, 28 Ohio St. 521.

⁶ *Thomas v. Gay*, 169 U.S. 264. See *Gay v. Thomas*, 5 Okl. 1

Oregon. The constitution provides that "all taxation shall be equal and uniform," and that the legislature "shall provide by law for uniform and equal rates of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property." These provisions were contravened by a statute relieving a certain railroad from the payment of all taxes for a period of twenty years, in consideration of its agreement to carry the troops and munitions of war of the state for such time.¹ The meaning of the requirement that taxes shall be uniform is, that each tax must be uniform through the taxing district; a state tax through the state, a county tax through the county, etc.² That requirement does not preclude allowing an assessed valuation to be reduced by deductions for the owner's indebtedness;³ nor does it render unconstitutional statutes permitting the state board of equalization to increase assessments made at less than the true cash value.⁴ But that board cannot, by adopting dissimilar classifications, or such as are not uniform throughout all the counties, as a basis for their deductions, produce the uniformity in values contemplated by the constitution.⁵ The provision requiring an equal and uniform rate of taxation is violated by an act authorizing a tax of a certain sum on bicycles without regard to their value, such vehicles being already taxable under the statute authorizing the assessment of real and personal property, so that this is double taxation from which other property is exempt.⁶

Pennsylvania. The constitution of this state provides: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax;⁷ but the general assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of re-

¹ Hogg v. Mackay, 23 Or. 339.

⁵ Dayton v. Board of Equal., 33 Or.

² East Portland v. Multnomah County, 6 Or. 62.

131.

³ Wetmore v. Multnomah County, 6 Or. 463. See Fayette County Treasurer v. People's, etc. Bank, 47 Ohio St. 503; Hubbard v. Brush, 61 Ohio St. 252.

⁶ Mills v. Frazier (Or.), 63 Pac. Rep. 642.

⁴ Smith v. Kelly, 24 Or. 464.

⁷ This provision was intended merely to restrict future legislation, and did not repeal statutes empowering a city to levy and collect certain taxes: Keystone Bridge Co.'s Appeal (Pa.), 7 Atl. Rep. 579.

ligious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity." In a recent case it is said that the words "all taxes" in the above provision "must necessarily be construed to include property tax, inheritance tax, succession tax, and all other kinds of tax the subjects of which are susceptible of just and proper classification. By necessary implication the first clause recognizes the authority of the legislature to justly and fairly, but never arbitrarily, classify those subjects of taxation with the view of effecting equality of burdens. A pretended classification that is based solely on a difference in quantity of precisely the same kind of property is necessarily unjust, arbitrary, and illegal."¹ In another case it is said that the classification should be according to some reasonable, practical rule, drawn from experience, which would prevent a gross inequality in the burdens of taxation.² Again: "The right to classify for the purposes of taxation, particularly license taxation, to tax the several classes at different rates, and to exempt classes, cannot now be questioned; the one condition requisite is that the tax on each class shall be levied alike on all the inhabitants of that class."³ To quote from a fourth case, "The moment the power to classify is conceded, the question of uniformity is disposed of; for then all the constitution requires is that taxes shall be uniform upon the members of a class. Classification for purposes of taxation, as a general rule, is a matter for the legislature."⁴ Professional men may be classified as physicians, lawyers, clergymen, etc.;

¹ In re Cope's Estate, 191 Pa. St. 1. This case holds that a statute declaring that all personal property which shall pass by will or by the intestate law shall be subject to a tax of two dollars on every one hundred dollars of the clear value thereof, and exempting from the payment of such tax personal property to the amount of five thousand dollars in all estates, violates the constitutional requirement of uniformity. When, however, the constitution does not require uniformity of taxation, the legislature can exempt individuals from liability for taxes on inheritances: *Commonwealth v. Henderson*,

172 Pa. St. 135. As the constitution expressly avoids all laws exempting from taxation property other than such as it enumerates, a previous statute making other exemptions became void when it was adopted: *Mercantile Library Hall Co. v. Pittsburgh (Pa.)*, 11 Atl. Rep. 667.

² *Commonwealth v. Delaware Div. Canal Co.*, 123 Pa. St. 594, cited in *Commonwealth v. Clark*, 195 Pa. St. 634.

³ *Commonwealth v. Muir*, 180 Pa. St. 47.

⁴ *Commonwealth v. Delaware Div. Canal Co.*, 123 Pa. St. 594.

tradesmen, as merchants, mechanics, etc., and other persons as bankers, manufacturers, etc., and a uniform tax assessed upon each class.¹ The legislature may classify a part of the lands in a city as "rural," and may assess them at a lower rate than other lands in the city.² Foreign and domestic corporations may be classified separately for purposes of taxation;³ a tax may be assessed upon the nominal value of municipal bonds while other like subjects of taxation are assessed at their actual value;⁴ a statute may impose a tax of five mills on the capital stock of certain kinds of corporations, and a tax of only three mills upon the stock of other kinds;⁵ and it is competent to make two classes of manufacturing corporations, one of which is taxed, while the other is not.⁶ The requirement of uniformity of taxation upon the same class of subjects is not disobeyed by a statute providing that each retail dealer in merchandise shall pay an annual mercantile license tax of two dollars, all persons so engaged to pay one mill extra on each dollar of the whole volume of business transacted annually, that each wholesale dealer in merchandise shall pay an annual mercantile license tax of three dollars, all persons so engaged to pay one half of a mill additional on each dollar of the whole volume of business transacted annually, and that each dealer in merchandise at any exchange or board of trade shall pay a mercantile tax of twenty-five cents on each thousand dollars' worth so sold; for even if the tax be considered as laid specifically on property, instead of being, as it is, a tax on the business of selling merchandise, the classification has a proper basis.⁷ An ordinance imposing a license tax on persons dealing in the selling of merchandise according to the amount of their sales, no manufacturer who is a citizen of the city to be considered a dealer or vendor of merchandise unless he sells goods not of his own

¹ Banger's Appeal, 109 Pa. St. 79.

² Roup's Case, 81½ Pa. St. 211.

³ Germania L. Ins. Co. v. Commonwealth, 85 Pa. St. 513. As to equality of taxation in general, see Weber v. Reinhard, 73 Pa. St. 370.

⁴ Commonwealth v. Martin, 107 Pa. St. 185; Commonwealth v. Del. Div. Canal Co., 123 Pa. St. 594.

⁵ Commonwealth v. Sharon Coal Co., 164 Pa. St. 284.

⁶ Commonwealth v. Germania Brewing Co., 145 Pa. St. 83; Commonwealth v. National Oil Co., 157 Pa. St. 516.

⁷ Kniseley v. Cotterel, 196 Pa. St. 614. See Commonwealth v. Clark, 195 Pa. St. 634.

manufacture, affords a proper classification.¹ Nor is the uniformity requirement violated by a statute which imposes the same tax on the excess of fees over a certain amount, less office expenses, received by an officer holding one office, as that imposed upon the excess of the aggregate fees over the same amount, less office expenses, received by an officer holding several offices.² The constitutional provision referred to does not require that the real estate of railroad companies shall be taxed as such, or preclude taxing the companies upon their franchises instead of upon their property as such.³ An act taxing coal companies according to the quantity of coal mined is a tax on the franchise, and valid as such;⁴ and this, and similar acts in force when the constitution was adopted, are not repealed by the constitutional provision that all taxes "shall be levied and collected under general laws," which is mandatory to the legislature, but otherwise inoperative until the legislature takes action under it.⁵ The provision just quoted is not violated by a statute providing for a difference in the number and mode of appointment of the appraisers in the counties generally, and in cities of the first class,⁶ or by acts relating to the classification of cities, and providing different systems of taxation for the different classes.⁷ A statute imposing a tax of fifty per cent. on fees over a certain amount received by certain county officers in counties having more than 150,000 inhabitants is not a local or special law regulating county affairs within the constitutional inhibition of such laws.⁸

A statute which would be held void if standing alone, as ex-

¹ *Commonwealth v. Clark*, 195 Pa. St. 634. Where an ordinance imposing a license tax varying according to the business done, classifies contractors and real-estate agents with persons making and effecting sales, except that they are exempt from the tax when doing an annual business of less than \$1,000, while the others are not, such exemption is void as class legislation: *Ibid.*

² *Commonwealth v. Anderson*, 178 Pa. St. 17.

³ *Northampton County v. Lehigh Coal, etc. Co.*, 75 Pa. St. 461.

⁴ *Kittanning Coal Co. v. Commonwealth*, 79 Pa. St. 100.

⁵ *Lehigh Iron Co. v. Lower Macungie*, 81 Pa. St. 482. See, for similar rulings, *Indiana County v. Agricultural Soc.*, 85 Pa. St. 357; *Coatesville Gas Co. v. Chester County*, 97 Pa. St. 476.

⁶ *Kniseley v. Cotterel*, 196 Pa. St. 614.

⁷ *Commonwealth v. Macferron*, 152 Pa. St. 244.

⁸ *Commonwealth v. Anderson*, 178 Pa. St. 171.

empting property of corporations from taxation while taxing that of individuals, has been held valid in view of an existing law taxing the capital stock of corporations.¹ As "the revenue laws of the commonwealth" referred to in a statute declaring that taxes laid on manufacturing corporations under such laws are abolished are those which provide revenue for the commonwealth, as distinguished from those which provide revenue for county, borough, school, and township purposes, the statute is not unconstitutional as an attempt to exempt property from all taxation.²

Rhode Island. The constitutional provision, "All laws should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens," is advisory, not mandatory; and it does not invalidate a statute authorizing towns to exempt from taxation property of manufacturing companies.³

South Carolina. The constitution ordains that property must be taxed in proportion to its value, and that "Taxes upon property shall be laid upon its actual value as the same shall be ascertained by an assessment made for the purposes of laying such tax." Under these provisions an act of the legislature which provides that every railroad shall pay a tax to the county, for the use of the state, in proportion to the length of its track, is void because not laid on property in proportion to value;⁴ an assessment is necessary to constitute a liability for an *ad valorem* tax.⁵ A statute requiring that all land-owners in certain counties shall during certain months remove from the running streams on their lands all trash, trees, rafts, etc., is, if it be considered as a tax upon property, unconstitutional as in conflict with the above mentioned provisions of the constitution.⁶ Those provisions are, not, however, infringed by a statute authorizing an assessment not exceeding a specified sum on each lot-owner for each lot on a certain island, to keep up the streets, commons, etc., of the island, which had been set

¹ Fox's Appeal, 112 Pa. St. 337.

⁴ State v. Railroad Corporations, 4

² Appeal of Hawes Manuf. Co. (Pa.), S. C. 376.

17 Atl. Rep. 219.

⁵ State v. Cheraw & D. R. Co. 54

³ Crafts v. Ray, 22 R. I. (46 Atl. Rep. S. C. 564.
1044).

⁶ State v. Tucker. 56 S. C. 515.

apart by statute for such citizens as might resort thereto for their health; this is an exercise of the police power, and not a tax upon property.¹ Where railroad property was assessed by the state board of equalization for railroads at eighty per cent. of its real value, under a statutory provision that all property should "be valued for taxation at its true value in money," while all other property in the state was assessed at from fifty to sixty per cent. of the real value, it was held that in view of the general mode of assessing property for taxation in the state there was no such evidence of an intention to violate the requirements of the constitution, and of a design to put the burden of tax on railroads alone, as would warrant the interference of the court.² A provision in a former constitution that the general assembly shall provide by law for a uniform and equal rate of assessment and taxation was violated by a tax-law which applied only to certain land-owners in certain specified counties of the state.³ Under the constitution of 1868 requiring all property to be assessed for taxation, a city council had no power to exempt factories from taxation.⁴

Another provision of the constitution requires license or privilege taxes to be just. This is not violated by a certain ordinance imposing upon certain occupations and professions a license or privilege tax which is uniform to the members of each class or occupation on which it operates, even though the different classes are not taxed alike. The requirement of uniformity is not applicable.⁵

The constitution of South Carolina also requires that municipal taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same. This is not contravened by the taxation of business as such, or by the classification of different kinds of business for different taxation — no personal distinctions being made.⁶

A further provision of the constitution that the general assembly shall require that all property, except that before ex-

¹ Thomas v. Moultrieville, 52 S. C. 181.

² Chamberlain v. Walter, 60 Fed. Rep. 788.

³ State v. Tucker, 56 S. C. 516.

⁴ Garrison v. Laurens, 54 S. C. 449. The constitution of 1895 does not

give power to cities to exempt from taxation, except after approval by the voters: Ibid.

⁵ Hill v. Abbeville (S. C.), 38 S. E. Rep. 11.

⁶ State v. Columbia, 6 S. C. 1.

empted, within the limits of municipal corporations, be taxed for the payment of debts contracted under the authority of law, does not, because of a provision in a city ordinance exempting \$100 worth of household furniture from the property on which the tax is laid, invalidate the entire ordinance, unless it is shown that by reason of such exemption the taxes on the property not exempted have been increased.¹

South Dakota. The constitution requires all taxes to be imposed according to the value of the property, equally and uniformly, and prohibits the passage of any law exempting property from taxation otherwise than as provided in the constitution. The former of these requirements was violated by a statute providing that assessments for the construction of artesian wells and water-courses might be laid upon lands, to be adjusted "with reference to the relative distance of such lands from the well itself and the water-courses."² It was also violated by a statute permitting the deduction of indebtedness from one kind of personal property, viz., credits, in making assessments for taxation, and from no other.³ But the provision requiring uniformity of taxation has no application to a police regulation of the liquor traffic imposing a license fee thereon calculated partially to prevent and alleviate the supposed direful influences and indirect consequences of the business.⁴ The prohibition of exemptions is violated by a statute allowing deductions of indebtedness from the value of property liable to taxation.⁵

Tennessee. Here the constitution declares that "All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value." It has been held that the mandate "requiring uniform taxation of uniform values" is not self-executing; and,

¹ *State v. Beaufort*, 39 S. C. 5.

⁴ *State v. Buechler*, 10 S. D. 156.

² *Turner v. Hand County*, 11 S. D. 348.

⁵ *In re Construction of Revenue Law*, 2 S. D. 58; *In re Assessment of*

³ *In re Assessment, etc. of Taxes*, 4 S. D. 6.

therefore, under a statute providing that no tax shall be assessed on the capital stock of any bank, but that the shares shall be assessed to the stockholders, no *ad valorem* tax can be assessed against the capital stock, and an attempted assessment is void.¹ Under this requirement taxation must always be uniform and equal throughout the extent of the same jurisdiction: state taxes must be equal and uniform throughout the state; county taxes must be equal and uniform throughout the county; and a city tax must be equal and uniform throughout the city, so far as revenues for current expenses or future wants are concerned.² The constitutional requirement cannot be evaded on a mere nominal ground of classification;³ and it is the duty of the state, where different species of property are to be assessed by different officers or boards, to provide for equality between them.⁴ For example, the principle of uniformity is violated by assessing railroad property at its full value when it is the uniform practice throughout the various counties to assess real property at not exceeding seventy-five per cent. of its true value.⁵ Under the constitutional requirement for taxation by value, and a statute requiring all property to be assessed at its actual cash value, one whose property has been assessed at less than its cash value, but proportionately higher than others, cannot have his assessment reduced, but may have the others raised.⁶ The constitutional provision for taxation by value has no reference to the taxation of privileges, and such taxation is in the discretion of the legislature. It is, therefore, competent to authorize a town to levy license taxes on the various occupations carried on therein.⁷ The provision applies to local as well as to general levies,⁸ and forbids

¹ *Union & P. Bank v. Memphis*, 101 Tenn. 154, citing *State v. Butler*, 86 Tenn. 631. In *Railroad & Tel. Cos. v. Board of Equalizers*, 85 Fed. Rep. 302, it was held that the provision in the constitution of Tennessee requiring uniformity of taxation is mandatory and self-executing, applying equally to the assessment of property and the levy of taxes thereon.

² *Jones v. Memphis*, 101 Tenn. 188.

³ *Nashville, C. & St. L. R. Co. v. Taylor*, 86 Fed. Rep. 168.

⁴ *Railroad & Tel. Cos. v. Board of Equalizers*, 85 Fed. Rep. 302.

⁵ *Railroad & Tel. Cos. v. Board of Equalizers*, 85 Fed. Rep. 302; *Taylor v. Louisville & N. R. Co.*, 88 Fed. Rep. 350, 31 C. C. A. 537.

⁶ *Carroll v. Alsop* (Tenn.), 64 S. W. Rep. 193.

⁷ *Adams v. Somerville*, 2 Head 363; *State v. Crawford*, 2 Head 460. See *State v. Schlier*, 3 Heisk. 281; *Apperson v. Memphis*, 2 Flip. 363.

⁸ *Taylor v. Chandler*, 9 Heisk. 349.

exemptions except as the constitution in express terms allows them,¹ and for the purposes of local taxation it precludes a railroad's being apportioned among the municipalities in proportion to the length of road within them.² The collateral inheritance tax law of Tennessee was held not unconstitutional as being not of uniform application, or as discriminating between direct descendants and collateral kindred and strangers.³ The provisions that "all property," with certain specific exceptions, shall be taxed, and that all taxable property shall be taxed "according to its value," apply to all taxation — special assessments as well as general taxes.⁴ It is held in this state that the legislature has the power to release county taxes.⁵

Texas. The constitution provides that "taxation shall be equal and uniform throughout the state," and that all property shall be taxed in proportion to its value, except where the legislature shall by a two-thirds vote exempt it. It has been held that taxes are uniform within the meaning of the constitution "when no person or class of persons is taxed at a higher rate than are other persons in the same district upon the same value or thing, and when the objects of taxation are the same, by whomsoever owned or whatsoever they may be."⁶ An act

¹ *Louisville, etc. R. Co. v. State*, 8 Heisk. 663; *Chattanooga v. Railroad Co.*, 7 Lea 561. A statute exempting certain territory annexed to a city for taxation for certain purposes for a certain time violates the constitutional provision for uniform and equal taxation: *Jones v. Memphis*, 101 Tenn. 188. The collateral inheritance tax is not unconstitutional because of its omitting estates under \$250 in value. The exemption of such estates is not arbitrary or devoid of good reason, as the expenses of administration are proportionately much greater in small than in large estates: *State v. Alston*, 94 Tenn. 674. Provisions of a former constitution prohibiting the legislature from granting official privileges, but conferring power to grant such charters of corporations as it might

deem expedient, did not forbid exempting a railroad company's capital stock: *Tennessee v. Whitworth*, 117 U. S. 139.

² *Chattanooga v. Railroad Co.*, 7 Lea 561; overruling on this point *Louisville, etc. R. Co. v. State*, 8 Heisk. 663.

³ *State v. Alston*, 94 Tenn. 674.

⁴ *Taylor v. Chandler*, 9 Heisk. 349; *State v. Butler*, 2 Lea 419; *Reelfoot Lake Levee Dist. v. Dawson*, 97 Tenn. 160.

⁵ *Demoville v. Davidson County*, 3 Pickle 214. And where the release is of all liability, it extends to the liability incurred to counties as well as to the state: *Ibid.* Release of druggists liable for liquor taxes, see *Ibid.*

⁶ *Norris v. Waco*, 57 Tex. 635.

creating a county out of territory taken from another county must be held void if, in fixing the liability of the new county according to territory, and ignoring the value of property therein, it imposes on the citizen a different burden for the same purpose than he would have to bear if there had been no severance of the county.¹ The constitutional provisions above recited are violated by a contract made between a city and a gaslight company, exempting the company's property from taxation.² But the requirement of equality and uniformity is not violated by a statute for the levy of local special assessments,³ or by graduating a tax on business by the population of the town in which the business is carried on,⁴ or according to the business done.⁵

Another provision of the constitution declaring that "all occupation taxes shall be equal and uniform upon the same class of subjects within the limit of the authority levying the tax," requires such a tax to be equal and uniform as a tax upon a given occupation and in its collection, and the failure to compel the collection of the tax from all the class alike is an evasion thereof.⁶

Utah. Here the constitution provides: "All property in the state not exempt from taxation under the laws of the United States or under this constitution shall be taxed in proportion to its value to be ascertained as provided by law," and "The legislature shall provide by law a uniform and equal

Mills County v. Brown County, 85 Tex. 391.

² *Austin v. Austin Gas-Light, etc. Co.*, 69 Tex. 180. Exempting from taxation the property of a water company in consideration of the free use of water for municipal purposes is not in violation of a constitutional provision declaring the property of corporations subject to taxation the same as that of individuals; and if the exemption proves to be void the company can recover for water furnished under the arrangement: *Bartholomew v. Austin*, 85 Fed. Rep. 359, 29 C. C. A. 568. See *Grant v. Davenport*, 36 Iowa 405. The constitution

of Texas exempting from taxation the property of counties, cities, and towns owned and held only for public purposes," applies to county school lands; and, where such lands are held under a lease from the county, they cannot be taxed as the lessee's property: *Davis v. Burnett*, 77 Tex. 3.

³ *Roundtree v. Galveston*, 42 Tex. 612.

⁴ *Texas Banking, etc. Co. v. State*, 42 Tex. 636; *Blessing v. Galveston*, 42 Tex. 641.

⁵ *Western Union Tel. Co. v. State*, 55 Tex. 314.

⁶ *Hoefling v. San Antonio*, 85 Tex. 228.

to levy a tax on a county office,¹ nor does it require the license taxes on privileges and occupations to be equal or uniform as between different occupations,² though they must be as between those following the same occupation.³ Nor is it violated by a statute imposing a license tax on persons selling manufactured articles by retail,⁴ or by an ordinance imposing a license tax on publishers of newspapers,⁵ or by an act imposing a license tax on fishermen within the state, and dividing fishermen into three classes, according to the depth of the water in which they fish, and grading the tax accordingly.⁶ A collateral inheritance tax is not properly a tax upon property within the requirement of equal and uniform taxation, it being rather a tax upon the privilege of succeeding to the inheritance.⁷

A constitutional provision conferring on each county the right to levy a tax for school purposes is violated by so much of certain statutes as exempts the school district therein provided for from the county school tax in consideration of a tax to be levied by the district.⁸

Washington. The constitution provides that "All property in the state not exempt under the laws of the United States or under this constitution shall be taxed, and that the legislature shall provide a uniform and equal rate of taxation on all property in the state, . . . provided that a deduction of debts from credits may be authorized." The word "uniformity" refers to property or persons of the same class; for example, different kinds of property may be taxed at different amounts pro-

¹ *Gilkerson v. Frederick Justices*, 13 Grat. 577. See, also, *Gordon's Executor v. Baltimore*, 5 Gill 231. Compare *Camden & Amboy R. Co. v. Hillegas*, 18 N. J. L. 11; *Same v. Commissioners of Appeals*, 18 N. J. L. 71; and *Gardner v. State*, 21 N. J. L. 557, in which a provision in a charter that the corporation should pay a certain tax, "and no other tax or impost shall be levied or assessed" upon it, was held to apply to county and town taxes, as well as those imposed for state purposes.

² *Slaughter v. Commonwealth*, 13 Grat. 767.

³ *Ex parte Thornton*, 4 Hughes 220. See, for some discussion of the constitutional provision, *Va. & Tenn. R. Co. v. Washington County*, 30 Grat. 471.

⁴ *American Harrow Co. v. Shaffer*, 68 Fed. Rep. 750.

⁵ *Norfolk v. Norfolk Landmark Pub. Co.*, 95 Va. 564.

⁶ *Morgan v. Commonwealth*, 98 Va. 812.

⁷ *Eyre v. Jacob*, 14 Grat. 422; *Schoolkill v. Lynchburg*, 78 Va. 366.

⁸ *Robertson v. Preston*, 97 Va. 296; *Washington Supervisors v. Saltville Land Co. (Va.)*, 39 S. E. Rep. 704.

rate of assessment and valuation on all property in the state according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of his or her property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property." Under these provisions it has been held that the valuation must be as near as reasonably practicable to the cash price for which the property valued would sell in open market.¹ A statute providing for the classification and equalization of property for taxation does not violate the requirement of uniformity and equality by excepting money from its operation, for money is, in respect to taxation, the constitutional standard of all values.² The constitutional provisions above detailed are contravened by a statute authorizing county commissioners to remit or abate taxes of certain persons.³ It has been held that to prevent the exemption of property not included within the exceptions of the constitution, express words of inhibition are not necessary; a positive direction in the constitution as to what property shall be exempt contains an implication against an exemption of any other property by the legislature.⁴ The direction to the legislature to "provide by law a uniform and equal rate of taxation of all property in the state according to its value in money" has reference to the levy of an *ad valorem* or direct tax upon property, and does not apply to licenses imposed upon privileges, business, and occupations.⁵

Vermont. The statute exempting certain manufacturing establishments from taxation for a term of years if the town so votes is not unconstitutional as providing an exemption by other means than the law of the state, nor does it contravene the provision of the constitution that no part of any person's property can justly be taken from him without his own consent."⁶

Virginia. The requirement that taxation shall be equal and uniform does not preclude the state from authorizing a county

¹ State v. Thomas, 16 Utah 86.

² State v. Thomas, 16 Utah 86.

³ State v. Armstrong, 17 Utah 166.

⁴ State v. Armstrong, 17 Utah 166.

⁵ Ogden City v. Crossman, 17 Utah 66.

⁶ Colton v. Montpelier, 71 Vt. 413.

viding the rate is uniform on the same class everywhere, with all people and at all times.¹ The constitutional requirement is not of uniform methods of taxation; and, therefore, a statute under which a bank is assessed for taxation on the shares of stock of other corporations held by it does not violate the rule of uniformity.² Where one statute provides that all realty and personalty in the state shall be subject to taxation, and where, under another statute, franchises are made subject to sale on execution and on foreclosure as "any other personal property," a corporate franchise is assessable for taxation.³ The provision for a uniform and equal rate of assessment was held not to be violated by the statute of 1897 relating to the issue of delinquent certificates and redemption therefrom.⁴ A statute providing that live stock driven into the state for the purpose of grazing after the first Monday in April in any year shall be assessed for taxes as if it had been in the county at the time of the annual assessment is not unconstitutional as discriminating between live stock and other property.⁵ The power to tax professions and occupations is within the absolute control, and rests within the discretion, of the legislature, and is not within the constitutional provision requiring uniformity and equality of taxation, as that provision refers to property taxes.⁶ It is held that all penalties for non-payment of taxes must be equally and uniformly imposed upon persons similarly situated and belonging to the same class.⁷ Under the proviso permitting a deduction of debts from credits to be authorized, such deduction must be by general law, and must be uniform and equal; and therefore an act providing that

¹ *State v. Whittlesey*, 17 Wash. 447. An assessor's action in assessing mortgages at their face value and lands at from one-fourth to one-fifth only of their value, held a violation of the requirement of equality and uniformity: *Andrews v. King County*, 1 Wash. St. 46.

² *Pacific Nat. Bank v. Pierce County*, 20 Wash. 675.

³ *Commercial Electric L. & P. Co. v. Judson*, 21 Wash. 49.

⁴ *State v. Whittlesey*, 17 Wash. 447.

⁵ *Wright v. Stinson*, 16 Wash. 368.

⁶ *Fleetwood v. Read*, 21 Wash. 547; *Stull v. De Mattos* (Wash.), 62 Pac. Rep. 451. The first of these cases holds that a city ordinance imposing a license tax of \$100 per annum on all merchants using trading stamps is not void as imposing excessive burdens; the second sustains an ordinance requiring auctioneers of stocks of merchandise, dress-goods, jewelry, etc., to pay a license fee of \$25 per day.

⁷ *State v. Whittlesey*, 17 Wash. 447.

debts may be deducted from money or credits other than bank stock is invalid.¹

The constitution of the state of Washington also provides that "the property of the United States, and of the state, counties, school districts, and other municipal subdivisions, and such other property as the legislature may by general laws provide, shall be exempt from taxation." The words "and such other property," etc., here used refer, it is held, to property of the same general character as that specially enumerated, and the legislature is not authorized to exempt any private property from taxation.²

A further provision of the constitution of this state that cities and towns and the charters thereof shall be subject to and controlled by general laws, applies to cities of the first class, and authorizes the legislature to change the methods of assessing and collecting taxes in such cities.³

West Virginia. Under constitutional provisions that all property, both real and personal, shall be taxed, "but property used for educational, literary, scientific, religious, or charitable purposes, and public property, may by law be exempted from taxation," it is not within the power of the legislature to exempt the property of a railroad corporation from taxation, and an exemption until the profits of the corporation shall reach a certain percentage is void.⁴ The provision that taxation shall be equal and uniform throughout the state, and that all property, real and personal, shall be taxed in proportion to value, has no application to local assessments.⁵ Insurance companies cannot be made a special class by themselves, and taxed differently from other corporations.⁶

A constitutional provision that "the legislature may by law authorize the corporate authorities of cities, towns, and villages for corporate purposes to assess and collect taxes; but such taxes shall be uniform with respect to persons and property

Pullman State Bank v. Manring, 18 Wash. 250.

²*State v. Daniel*, 17 Wash. 111.

³*State v. Carson*, 6 Wash. 250.

⁴*Chesapeake & O. Co. v. Miller*, 19 W. Va. 408.

⁵*Douglass v. Harrisville*, 9 W. Va. 162.

⁶*Franklin Ins. Co. v. State*, 5 W. Va. 349. *Contra*, *Insurance Co. v. New Orleans*, 1 Woods 85; *Hughes v. Cairo*, 92 Ill. 339, and many other cases.

within the jurisdiction of the authority imposing the same," must be understood to be prospective in operation, and will not of its own force repeal a law in existence at its adoption.¹

Wisconsin. The constitutional provision that "the rule of taxation shall be uniform" extends to taxation by cities, towns, and counties, as well as that levied by the state.² It does not preclude license taxes under the police power.³ And the state having for a long period been in the practice of collecting specific taxes from corporations in lieu of the taxes on property levied generally, it was decided, but against the opinion of the judges as to what the rule should be, that such specific taxes were not in violation of the constitutional requirement of uniformity.⁴ The provision is not violated by an act which exempts from taxation for a term of years lands which have been granted in aid of public improvements, or by an extension of such exemption for a further term thereafter.⁵ Nor is it violated where a city contracts with a water company to pay for water a sum equal to all taxes levied on certain parts of the company's plant; the agreement is not invalid as an exemption from taxation, for it contemplates the payment of taxes.⁶ Nor is it violated by permitting real and personal estate to be assessed as of different days,⁷ or by a rule for ascertaining the value that differs from that of personalty.⁸ But it is necessary under this provision that all kinds of property not absolutely

¹ *Douglass v. Harrisville*, 9 W. Va. 162. See *Lehigh Iron Co. v. Lower Macungie*, 81 Pa. St. 482.

² *Knowlton v. Supervisors*, 9 Wis. 410; *Hale v. Kenosha*, 29 Wis. 599; *Gilman v. Sheboygan*, 2 Black 610.

³ *Carter v. Dow*, 16 Wis. 298 (dog license); *Tenney v. Lenz*, 16 Wis. 566; *Fire Department v. Helfenstein*, 16 Wis. 136.

⁴ *Kneeland v. Milwaukee*, 15 Wis. 454, overruling *Attorney-General v. Plankroad Co.*, 11 Wis. 35.

⁵ *Wisconsin Central R. Co. v. Taylor County*, 52 Wis. 37. There is a very full discussion of the subject in the light of previous Wisconsin decisions in this case.

⁶ *Monroe Water-Works Co. v. Monroe* (Wis.), 85 N. W. Rep. 685.

⁷ *Wisconsin Central R. Co. v. Lincoln County*, 52 Wis. 137. A tax-law fixing April 1st as the date for assessing saw-logs belonging to non-residents, and May 1st for assessing saw-logs of residents, was held not to violate the principle of uniformity, or to discriminate unjustly against non-residents: *Nelson Lumber Co. v. Loraine*, 22 Fed. Rep. 54. See *People v. Commissioners of Taxes*, 91 N. Y. 593; *Thomas v. Gay*, 169 U. S. 264; *State v. Lindell Hotel Co.*, 9 Mo. App. 450; *Gay v. Thomas*, 5 Okl. 1.

⁸ *Plumer v. Board of Supervisors*, 46 Wis. 163.

exempt shall be taxed alike, by the same standard of valuation, equally with other taxable property, and co-extensive with the district; and therefore the levy of a tax for a public improvement which is restricted to real estate is unconstitutional and void.¹

The rule of taxation must be uniform within the district for which the tax is laid;² but the constitutional requirement of uniformity may be violated as well by evasion or disregard of duty on the part of officers as otherwise; and if this occurs to an extent that defeats general equality and uniformity in the assessment it cannot become the foundation of a valid tax.³ The rule of uniformity is violated by a statute requiring the payment to the county treasurer of a percentage on all estates of decedents of more than \$3,000 in counties of 150,000 inhabitants, as a condition precedent to their settlement in probate proceedings. The tax is not one upon the succession to an estate, but upon the whole estate at its assessed valuation, whether solvent or insolvent.⁴

The constitutional provision requiring the legislature to restrict "the powers of assessment of municipal corporations so as to prevent abuses in assessments" does not deprive the legislature of the power to exempt their property from assessments.⁵

Wyoming. The constitution of this state provides that: "All taxation shall be equal and uniform," and that "All property, except as in the constitution otherwise provided, shall be uniformly assessed for taxation, and the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal." These provisions are not in-

¹*Gilman v. Sheboygan*, 2 Black 610. See *Kittle v. Shervin*, 11 Neb. 65; *Waring v. Savannah*, 60 Ga. 93. In *Winter v. Montgomery*, 65 Ala. 403, the levy of a tax to pay railroad-aid bonds on real estate exclusively was held to be an irregularity merely, which the parties concerned ought to have had corrected by *mandamus* if necessary, and that they were not entitled, after paying the tax, to sue and recover back. The query is suggested, whether, under statutory au-

thority to levy the tax on real and personal estate, the city might not legally confine the levy to one species of property.

²*Wisconsin Central R. Co. v. Taylor County*, 52 Wis. 37.

³*Marsh v. Supervisors*, 42 Wis. 502. See *Wisconsin Central R. Co. v. Taylor County*, 52 Wis. 37; *Plumer v. Supervisors*, 46 Wis. 163.

⁴*State v. Mann*, 76 Wis. 469.

⁵*Milwaukee Electric R. etc. Co. v. Milwaukee*, 95 Wis. 42.

fringed by a statute providing that all live stock brought into the state "for the purpose of being grazed" shall be taxed for the fiscal year during which it is brought into the state, and vesting the county assessors with power to collect the same as soon as the property is brought into their counties to graze.¹ It has also been held that a statute regulating the assessment of live stock on the open range is not unconstitutional as special legislation consisting of an arbitrary attempt to create two classes of live stock for purposes of taxation, not based on any reasonable ground or necessity.² A statute providing for the assessment of "any personal property" brought or driven into the territory after the regular assessment in any year, but excepting from such an assessment goods brought by a merchant to replenish and keep up his stock to the amount at which it was originally assessed, cannot be held an unlawful discrimination "in taxing different kinds of property," within the federal statute.³ And a city ordinance, imposing a license on transient merchants and venders, and exempting from its operation merchants selling goods on which an annual city tax has been paid, and also traveling salesmen, does not contravene the constitutional requirement of equality and uniformity.⁴

It will be shown hereafter that constitutional provisions requiring taxation to be uniform and according to value do not, as a general rule, apply to special assessments for local improvements.⁵

The construction of the requirement of the federal constitution that "all duties, imposts and excises shall be uniform throughout the United States" has been given in an earlier chapter of this work.⁶

The general right to make exemptions. Having now given some of the constitutional provisions which have a bearing upon exemptions, we proceed to consider the rule on that subject when the constitution is silent, or at least has failed to cover the subject fully.

¹ *Kelley v. Rhoads*, 7 Wyo. 237.

⁴ *State v. Willingham* (Wyo.), 62

² *Standard Cattle Co. v. Baird*, 8 Wyo. 144.

Pac. Rep. 797.

⁵ *Post*, ch. XX.

³ *Frontier, etc. Co. v. Baldwin*, 3 Wyo. 764.

⁶ *Ante*, p. 179, note 2.

The general rule on the subject is familiar, and has been too often declared to be open to question. The right to make exemptions is involved in the right to select the subjects of taxation and apportion the public burdens among them, and must consequently be understood to exist in the law-making power wherever it has not in terms been taken away.¹ To some extent it must exist always; for the selection of subjects of taxation is of itself an exemption of what is not selected;² but the power to exempt even from among such subjects is more likely to be restricted than to be altogether prohibited. Where no rule for exemptions is provided in the constitution, the power to make them is not limited to general taxation, but enables the legislature to exempt from the operation of any form of the taxing power, for example, from special assessments for local improvements.³ Exemptions, when properly made, must be determined in the legislative discretion, which is not, however, arbitrary; there must underlie its exercise some principle of

¹ *Butler's Appeal*, 73 Pa. St. 448. See *People v. Colman*, 4 Cal. 46; *Ferris v. Vannier*, 6 Dak. 186; *Indianapolis v. Sturdevant*, 24 Ind. 391; *Mayor, etc. v. Jackson*, 89 Md. 518; *State v. North*, 27 Mo. 464; *Scotland County v. Railroad Co.*, 65 Mo. 123; *State v. Parker*, 33 N. J. L. 312; *Dyker Meadow Land, etc. Co. v. Cook*, 3 App. Div. (N. Y.) 164; *Hill v. Higdon*, 5 Ohio St. 243; *McTwiggan v. Hunter*, 18 R. L. 776; *Crafts v. Ray*, 22 R. I. (46 Atl. 1043); *Savings Bank v. Rutland*, 52 Vt. 463; *Colton v. Montpelier*, 71 Vt. 413; *Williamson v. Massey*, 33 Grat. 237; *Probasco v. Moundsville*, 11 W. Va. 501; *Wisconsin Central R. Co. v. Taylor County*, 52 Wis. 37. In New Hampshire the legislature has the same power to authorize towns to exempt from taxation capital to be invested therein in the erection of summer hotels, as it has to authorize the exemption of manufacturing establishments or shipbuilding: *Opinions of Justices* (N. H.), 50 Atl. Rep. 329. In Michigan the legislature does not

infringe the principle of uniformity by exempting property from taxation, or by remitting taxes: *People v. Auditor-General*, 7 Mich. 84; and it may exempt, for a limited time, unsold swamp land given in aid of railroads: *Chippewa County v. Auditor-General*, 65 Mich. 408. See *Detroit Citizens' St. R. Co. v. Common Council*, 125 Mich. 673. In New York it is held that the legislature may release property which has been assessed for taxation, and this power may be exercised in any way and at any time before the completion of the proceedings for taxation: *People v. Commissioners*, 142 N. Y. 348. Unless restrained by the constitution the legislature may direct the restitution to taxpayers of property exacted from them by taxation: *Board v. Lucas*, 93 U. S. 108.

² *Magoun v. Illinois Trust, etc. Bank*, 170 U. S. 283, 289; *McTwiggan v. Hunter*, 18 R. L. 776.

³ *Dyker, etc. Co. v. Cook*, 3 App. Div. (N. Y.), 164; *Milwaukee E. R. etc. Co. v. Milwaukee*, 95 Wis. 42.

public policy that can support a presumption that the public interest will be subserved by the exemptions allowed.¹

Pertaining as it does to the sovereign power to tax, the municipalities of a state have not the exempting power except as they are expressly authorized by the state.² And obviously

¹Thomas v. Sneed (Va.), 39 S. E. Rep. 586.

²Tampa v. Kaunitz, 39 Fla. 684; Morris Ice Co. v. Adams, 75 Miss. 410; Yazoo & M. V. R. Co. v. Adams, 76 Miss. 545; State v. Hannibal & St. J. R. Co., 75 Mo. 209; State v. Arnold, 136 Mo. 446; Cox Needle Co. v. Gilford, 62 N. H. 503; Franklin Falls Pulp Co. v. Franklin, 66 N. H. 274; State v. Gracey, 11 Nev. 223; McTwiggan v. Hunter, 18 R. I. 776; Whiting v. West Point, 88 Va. 905; Thomas v. Sneed (Va.), 39 S. E. Rep. 586. A town cannot extend an exemption beyond the amount specified in its charter: New London v. Colby Academy, 69 N. H. 443. Nor can other property than that enumerated in the charter be exempted: Germania Savings Bank v. Darlington, 50 S. C. 337. A statute authorizing towns to exempt manufacturing property from taxation for a term not exceeding ten years does not confer authority to exempt the same property for a second period of ten years: Boody v. Watson, 63 N. H. 320. And under a statute permitting manufacturing establishments to be exempted, such an establishment cannot be exempted as to articles purchased by the proprietor: Kimball Carriage Co. v. Manchester, 67 N. H. 483. Where by statute town councils are authorized to grant the right to lay water-pipes and erect reservoirs, and to exempt such pipes and reservoirs from taxation, the exemption can only be made as one of the terms of the grant, and cannot be given to works already built: Bowen v. Newell, 16 R. I. 238. Authority to tax-commissioners to remit or reduce taxes does not empower

them to make exemptions. They can remit no tax except for legal cause, and cannot, therefore, remit the tax on a medical college and hospital not exempt by law: People v. Campbell, 93 N. Y. 196. In Athens v. Long, 64 Ga. 330, and Waring v. Savannah, 60 Ga. 93, municipalities were held to have the power to make exemptions: see Cutliff v. Albany, 60 Ga. 597. But in Cartersville Waterworks Co. v. Cartersville, 89 Ga. 689, it is held that a city has not power to exempt by contract the property of a water company from taxation, and that the company cannot take such exemption by way of gratuity or purchase it by way of commutation. The same is held in other cases, and also with reference to the furnishing of gas: New Orleans v. Water Works Co., 36 La. 432; Nebraska City v. Gas Light Co., 9 Neb. 339; Austin v. Austin Gas, etc. Co., 69 Tex. 180; Altgelt v. San Antonio, 81 Tex. 436. On the other hand it seems to be held in Grant v. Davenport, 36 Iowa. 396, that a city may make an exemption from taxation a part of the consideration for a water company's supplying it with water. In the case of Cartersville Imp., Gas & W. Co. v. Cartersville, 89 Ga. 683, it was decided that while a city cannot exempt a gas company from taxation, it can contract to pay for gas a stipulated sum per lamp, and, in addition thereto, a sum for all the lamps supplied, equivalent to the amount of taxes imposed upon the company, provided this additional sum is a just allowance to compensate for the value of the light, and provided also the stipulation is *bona fide*, and not in the nature of an evasion of the

it is not competent to confer a general power to make exemptions, since that would be nothing short of a general power to establish inequality.¹ No state can exempt property from taxation in another state.²

Congress, like a state legislature unrestricted by constitu-

law. So, a contract between a city and a water company that the city, in consideration of the furnishing of water, shall pay a sum equal to all taxes levied on certain parts of the company's plant, is not invalid as an exemption from taxation, for it contemplates the payment of taxes: *Water-works Co. v. Monroe* (Wis.), 85 N. W. Rep. 685. Where a person buying a city's gas plant agrees to light the city's streets for a certain sum in consideration of the city's agreeing to pay any city taxes on the gas plant, it is not an exemption from taxation but a consideration for the purchase of the plant, and the contract can be enforced: *Board of Councilmen v. Capitol Gas, etc. Co.* (Ky.), 29 S. W. Rep. 855. A city council in consideration of the grant to the city of the right to construct a sewer across certain lands may exempt such lands from taxation for the construction of the sewer: *Coit v. Grand Rapids*, 115 Mich. 493. Where land was dedicated to a city for streets, an express provision that the proprietors of certain lots should not be assessed for special benefits accruing from the extension of streets was without the city's power and void: *Vrana v. St. Louis* (Mo.), 64 S. W. Rep. 180. Where all property is assessed its just proportion, a contract by the city to refund to certain private persons does not render the taxation invalid even though such contract is illegal: *State v. Thayer*, 69 Minn. 170. A contract between a city and a street railroad company, by which the former took a percentage of the company's earnings in

lieu of taxes, was held valid, although the city, when it was executed, had no right to enter into the same but was thereafter authorized: *Detroit Citizens' St. R. Co. v. Common Council*, 125 Mich. 673.

¹*Brewer Brick Co. v. Brewer*, 62 Me. 62; *Farnsworth v. Lisbon*, 62 Me. 451. The legislature cannot confer a general power to remit taxes upon a board of supervisors; this being equivalent to a general power to make exemptions: *Wilson v. Supervisors*, 47 Cal. 91. See *Dubuque v. Illinois, etc. R. Co.*, 39 Iowa, 56; *New Orleans v. Sugar Shed Co.*, 35 La. An. 548; *Zanesville v. Richards*, 5 Ohio St. 590. Where a statute gave a board "full power and authority over lands authorized to be appropriated in aid of a railroad, the reservations necessary, and the privileges requisite in the application of such lands to such purpose," with a proviso limiting the power of exemption from taxation, but not in express terms empowering the board to exempt from taxation, it was held that the language, taken in connection with the proviso, was broad enough to show that the intent of the legislature was that the board could contract to exempt the lands from taxation: *Chippewa County v. Auditor-General*, 65 Mich. 408.

²*Appeal Tax Court v. Patterson*, 50 Md. 354; *Brown v. Tax Com'rs* (Mich.), 85 N. W. Rep. 307. An exemption accorded to a savings bank by the laws of the state of its creation is of no avail to exempt property owned by it in another state: *People v. Coleman*, 135 N. Y. 231.

tional provision, may, at its discretion, wholly exempt from taxation certain classes of property in the District of Columbia, or may tax them at a rate lower than that imposed upon other property.¹

Customary exemptions. Some of the customary exemptions are in themselves so reasonable that they readily receive universal assent as proper and politic. Such are the exemptions of household furniture, tools of trade, etc., to a moderate amount,² and of the personal property of those who by reason of age, infirmity or poverty are unable to contribute to the public burdens.³ Sometimes a homestead of limited value is exempted.⁴ For the encouragement of manufactures exemptions have also been made in some cases, but on very doubtful

¹ *Gibbons v. District of Columbia*, 116 U. S. 404.

² See *Smith v. Osburn*, 53 Iowa 474; *Equitable L. Assur. Soc. v. Goode*, 101 Iowa 160; *Day v. Lawrence*, 167 Mass. 371; *Frantz v. Dobson*, 64 Miss. 631.

³ When officers have power by law to make exemptions in special cases, if they refuse to make one, the party concerned is without remedy unless an appeal is given by law: *Clinton School District's Appeal*, 56 Pa. St. 315. Such a power is only admissible where an examination into facts is essential in order to determine whether the case is within the general rule of exemption prescribed by law: See *Brewer Brick Co. v. Brewer*, 62 Me. 62. An assessor has no authority to assess lands exempt from taxation, and his action in determining that it is not so used as to bring it within the exemption is not conclusive: *Portland Univ. v. Multnomah County*, 31 Or. 498. A decision by a controller that a corporation is not subject to a tax is not conclusive upon his successors as to the liability of the same corporation in subsequent years: *People v. Roberts*, 155 N. Y. 408. A judgment de-

termining the right to be exempt under the city charter as it existed under the former constitution is not conclusive as to the right to the exemption for subsequent years under the charter as amended by the new constitution: *Newport v. Masonic Temple Assoc.*, 103 Ky. 592.

⁴ When it is, the sale of the tract which includes the homestead is void: *Penn v. Clemans*, 19 Iowa 372; *Stewart v. Corbin*, 25 Iowa 144. For construction of a homestead exemption, see *Oliver v. White*, 18 S. C. 235. In Georgia a homestead estate is liable for all taxes due from the head of the family: *Lamar v. Shepard*, 80 Ga. 25. A homestead in Florida is not exempt under the constitution from sale for taxes or assessments: *Huff v. Jacksonville*, 29 Fla. 1. In Texas a homestead is not subject to forced sale for special assessments for benefits: *Higgins v. Bordages*, 88 Tex. 458. For an exemption of a home from the Iowa mulct tax, see *Lucas County v. Leonard*, 107 Iowa 593. Statutory exemption of land and improvements "not exceeding in value \$1,000." construed: *Grigsby v. Minnehaha County*, 5 S. D. 561.

grounds,¹ and they have also been allowed in favor of persons engaged in mechanical pursuits.²

¹ See *Gardiner, etc. Co. v. Gardiner*, 5 Ma. 163; *Columbian, etc. Co. v. Vanderpoel*, 4 Cow. 556. A statute exempting certain named establishments from taxation if the town so votes is not for the purpose of aiding private persons, but to benefit the public: *Colton v. Montpelier*, 71 Vt. 413. Under a statute authorizing towns to exempt from taxation manufacturing establishments to be put in operation therein, and the capital used in operating the same, the exemption was held to extend to real estate previously taxed which had been bought for the purpose of erecting such establishment: *Franklin Needle Co. v. Franklin*, 65 N. H. 177. Exemption held applicable only to factories subsequently established or revived: *Yacona Cotton Mills v. Duke*, 71 Miss. 790. A statute exempting manufacturing establishments was held applicable to leased property, so that it was no objection that the building and machinery were occupied and used by tenants, and not by the builders and owners: *Colton v. Montpelier*, 71 Vt. 413. For the construction of a constitutional exemption of property, etc., employed in the manufacture of furniture and other articles of wood, etc., see *New Orleans v. Le Blanc*, 34 La. An. 596; *New Orleans v. Ernst*, 35 La. An. 747; *Jones v. Raines*, 35 La. An. 996; *New Orleans v. Arthurs*, 36 La. An. 98; *State v. Board of Assessors*, 36 La. An. 347; *Martin v. New Orleans*, 38 La. An. 297; *Carre v. New Orleans*, 41 La. An. 996; *Washburn v. New Orleans*, 43 La. An. 226; *Gast v. Board of Assessors*, 43 La. An. 1104; *Rose-*

dale Lumber, etc. Co. v. Brusle, 45 La. An. 456; *White Castle Lumber, etc. Co. v. Browne*, 45 La. An. 459; *Brooklyn Cooperage Co. v. New Orleans*, 47 La. An. 1314; *Nicholson v. Board of Assessors*, 48 La. An. 1570; *Whited, etc. Co. v. Bledsoe*, 49 La. An. 325; *In re Southern Wood Manuf. Co.*, 49 La. An. 926. As to the constitutional exemption in Louisiana, of property, etc., employed in the manufacture of "stationery, ink, and paper," see *State v. Dupre*, 42 La. An. 561; *Washburn v. New Orleans*, 43 La. An. 226; *Nicholson v. Parker*, 44 La. An. 76; *Patterson v. New Orleans*, 47 La. An. 275. Exemption of machinery and other property used in boat building: *Robertson v. New Orleans*, 45 La. An. 617. Exemption by the Louisiana constitution of property employed in manufacturing textile fabrics: *Cohn v. Parker*, 41 La. An. 894; *Waterbury v. Atlas Cordage Co.*, 42 La. An. 723. For the exemption in the same state of property employed in manufacturing chemicals, see *Shreveport Gas, etc. Co. v. New Orleans*, 43 La. An. 768. And further as to the exemption, in Louisiana, of "capital, machinery, and property" employed in the manufacture of certain articles, see *State v. Board of Assessors*, 41 La. An. 534; *Louisiana & N. O. Ice Co. v. Parker*, 42 La. An. 669; *Waterbury v. Atlas Cordage Co.*, 42 La. An. 723; *Ivens, etc. Co. v. Parker*, 42 La. An. 1103; *Ricks v. Board of Assessors*, 44 La. An. 91; *Taylor, etc. Co. v. New Orleans*, 44 La. An. 554; *Benedict v. New Orleans*, 44 La. An. 793; *Electric, etc. Co. v. New Orleans*, 45 La. An. 1475; *State v. Board of Assessors*,

² *New Orleans v. Longman*, 43 La. An. 1180; *New Orleans v. O'Neil*, 43 La. An. 1182; *State v. Dielenschneider*, 44 La. An. 1116; *State v. Mc-*

Nally, 45 La. An. 44; *New Orleans v. Pohlman*, 45 La. An. 219; *New Orleans v. Leibe*, 45 La. An. 346; *State v. Hirn*, 46 La. An. 1443.

Charities. It is also customary to exempt from taxation the property of charitable corporations, institutions, and associations, so far as it is actually made use of for charitable purposes. This is upon the ground that they perform service for the public, and to some extent, at least, relieve the state from expense.¹ The questions what is to be regarded as a charitable institution or organization, and what are to be regarded as charitable purposes, within the meaning of the law making

46 La. An. 859; *Moore v. New Orleans*, 48 La. An. 1452; *Southern Chem. etc. Co. v. Board of Assessors*, 48 La. An. 1475; *Nicholson v. Board of Assessors*, 48 La. An. 1570; *Union Stave Co. v. Langridge*, 50 La. An. 1343; *Union Oil Co. v. Marrero*, 52 La. An. 357; *Havana American Co. v. Board of Assessors*, 105 La. (29 South. Rep. 938). Who are exempt in Louisiana as "manufacturers:" *New Orleans v. Mannessier*, 32 La. An. 1075; *State v. Dupre*, 42 La. An. 561; *State v. Eckendorf*, 46 La. An. 131; *New Orleans v. New Orleans Coffee Co.*, 46 La. An. 86; *State v. American Biscuit Manuf. Co.*, 47 La. An. 160; *Patterson v. New Orleans*, 47 La. An. 275; *Lake v. Guillotte*, 48 La. An. 870; *Nicholson v. Board of Assessors*, 48 La. An. 1570; *State v. American Sugar Refining Co.*, 51 La. An. 562; *State v. Wilberts' Sons' L. & S. Co.*, 51 La. An. 1223. As to what is a manufacturing company within the constitutional exemption, see *Chickasaw Cooperage Co. v. Police Jury*, 48 La. An. 523. In Louisiana the products of a manufactory being a mere form into which the capital employed in business has temporarily passed, they are exempt from taxation as part of the capital employed in manufacture, so long as the business is continued: *Electric, etc. Co. v. New Orleans*, 45 La. An. 1475. A mill is not exempt under the constitution of Louisiana from taxation for the production of cotton-seed meal, which should be used for food pur-

poses, and not as a fertilizer: *St. Landry Cotton-Oil Co. v. McGee*, 49 La. An. 750. The exemption from taxation, in Louisiana, of property employed in manufactures, is forfeited during the continuance of a lease made for the purpose of closing the factory to limit production and prevent competition: *Waterbury v. Atlas Cordage Co.*, 42 La. An. 723. Nor does that exemption apply to the capital or business of a firm which has abandoned the business of manufacturing: *Electric, etc. Co. v. New Orleans*, 45 La. An. 1475. But the exemption is not lost by temporary interruptions in operation: *Waterbury v. Atlas Cordage Co.*, 42 La. An. 723; *Hernsheim v. Atlas Steam Cordage Co.*, 42 La. An. 726. Under the city charter of Newark a manufacturing plant is exempt from taxation, although on account of the owner's insolvency its operation is temporarily suspended: *Bradford v. Mote*, 2 Marvel (Del.) 159. One who purchases the plant of a manufacturing establishment is without interest to have cancellation of the taxes assessed against the same prior to his purchase: *In re Southern Wood Manuf. Co.*, 49 La. An. 926. A statute providing that manufacturers shall receive from county and city treasurers a certain portion of the taxes they have paid does not exempt them from taxation: *Germania Savings Bank v. Darlington*, 50 S. C. 337.

¹ *New England Theosoph. Corp. v. Boston*, 172 Mass. 60.

exemptions, sometimes present difficulties, and have been discussed in many cases which are referred to in the margin.¹

¹See *Williamson v. New Jersey*, 130 U. S. 189; *Brodie v. Fitzgerald*, 57 Ark. 445; *Savannah v. Solomon's Lodge*, 53 Ga. 93; *Trustees v. Bohler*, 80 Ga. 159; *Massenburg v. Grand Lodge*, 81 Ga. 212; *People v. Wabash R. Co.*, 138 Ill. 85; *Zabel v. Louisville Baptist Orphans' Home*, 92 Ky. 89; *Henderson v. Strangers' Rest Lodge (Ky.)*, 17 S. W. Rep. 215; *Trustees v. Louisville*, 100 Ky. 470; *Louisville v. Trustees*, 100 Ky. 518; *Newport v. Masonic Temple Assoc. (Ky.)*, 56 S. W. Rep. 405; *New Orleans v. Orphan Asylum*, 33 La. An. 850; *State v. Board of Assessors*, 34 La. An. 574; *New Orleans v. Female Orphan Asylum*, 37 La. An. 68; *State v. Board of Assessors*, 52 La. An. 223; *Bangor v. Masonic Lodge*, 73 Me. 428; *Appeal Tax Court v. Grand Lodge*, 50 Md. 421; *Massachusetts Soc. v. Boston*, 142 Mass. 24; *Mount Hermon Boys' School v. Gill*, 145 Mass. 139; *Young Men's Prot. Temp. & Ben. Soc. v. Fall River*, 160 Mass. 409; *New England Theosoph. Corp. v. Boston*, 172 Mass. 60; *Balch v. Shaw*, 174 Mass. 144; *Bates v. Sharon*, 175 Mass. 293; *Hooper v. Shaw*, 176 Mass. 190; *Hennepin County v. Grace*, 27 Minn. 503; *Washburn Memorial Orphan Asylum v. State*, 73 Minn. 343; *Ridgely Lodge v. Redus (Miss.)*, 29 South. Rep. 163; *State v. Powers*, 74 Mo. 476; *Bishop's Residence Co. v. Hudson*, 68 Mo. 133, 91 Mo. 671; *State v. McGrath*, 95 Mo. 193; *Fitterer v. Crawford*, 157 Mo. 51; *Adelphia Lodge v. Crawford*, 157 Mo. 356; *Montana Catholic Missions v. Lewis*, 13 Mont. 559; *Alton Bay Camp-meeting Assoc. v. Alton*, 69 N. H. 311; *State v. Collector*, 52 N. J. L. 373; *Newark v. Verona T'p*, 59 N. J. L. 94; *Home for Education, etc. v. Collector*, 59 N. J. L. 343; *Trustees v. Patterson*, 61 N. J. L. 420; *Cooper Hospital v. Burdsall*, 63 N. J. L. 85; *Paterson Rescue Mission v. High*, 64 N. J. L. 116; *Sisters of Peace v. Westervelt*, 64 N. J. L. 510; *Litz v. Johnston (N. J.)*, 46 Atl. Rep. 586; *State v. Johnston (N. J.)*, 46 Atl. Rep. 776; *Seashore House v. Atlantic City (N. J.)*, 48 Atl. Rep. 242; *State v. New York Yearly Meeting (N. J.)*, 48 Atl. Rep. 227; *State v. Brakeley (N. J.)*, 50 Atl. Rep. 589; *Assoc. for Colored Orphans v. New York*, 104 N. Y. 581; *In re Vassar*, 127 N. Y. 1; *In re Huntington's Estate (N. Y.)*, 61 N. E. Rep. 643; *Matter of Miller*, 5 Dem. (N. Y.) 132; *People v. New York Tax Com'rs*, 36 Hun 311; *In re Herr's Will*, 55 Hun 167; *People v. Purdy*, 58 Hun 386; *Matter of Forrester*, 58 Hun 611; *Western Dispensary v. New York*, 56 N. Y. Super. Ct. 361; *In re Lenox's Estate*, 9 N. Y. S. 895; *In re Vanderbilt's Estate*, 10 N. Y. S. 239; *Engstad v. Grand Forks County*, 10 N. D. (84 N. W. Rep. 577); *Cleveland Lit. Inst. v. Pelton*, 36 Ohio St. 253; *Hibernian Ben. Soc. v. Kelly*, 28 Or. 173; *Donahugh's Appeal*, 86 Pa. St. 306; *Orphan Asylum v. School Dist.*, 90 Pa. St. 21; *Delaware County Inst. v. Delaware County*, 94 Pa. St. 163; *Thiel College v. Mercer County*, 101 Pa. St. 530; *Cumru T'p v. Directors*, 112 Pa. St. 264; *Philadelphia's Appeal (Pa.)*, 15 Atl. Rep. 683; *Armstrong County v. Overseers of Poor (Pa.)*, 15 Atl. Rep. 892; *Philadelphia v. Women's Christian Assoc.*, 125 Pa. St. 572; *House of Refuge v. Smith*, 140 Pa. St. 387; *Philadelphia v. Jewish Hosp. Assoc.*, 148 Pa. St. 454; *Trustees v. Taylor*, 150 Pa. St. 565; *Philadelphia v. Pennsylvania Hosp.*, 154 Pa. St. 9; *Philadelphia v. Ladies' United Aid Soc.*, 154 Pa. St. 12; *Philadelphia v. Masonic Home*, 160 Pa. St. 57; *American Sunday-School Union v. Taylor*, 161 Pa. St. 307; *Con-*

Education. The property of schools, academies, seminaries, and universities is also commonly exempted, though held and owned by private corporations or individuals. Sometimes the exemption is general, and sometimes it is restricted to a particular class of schools.¹ If the exemption is only of property

tributors *v.* Delaware County, 169 Pa. St. 305; Woman's Home Missionary Soc. *v.* Taylor, 173 Pa. St. 456; *In re* Finnen's Estate, 196 Pa. St. 72; State *v.* Addison, 2 S. C. 499; Book Agents *v.* Hinton, 92 Tenn. 188; Morris *v.* Lone Star Chapter, 68 Tex. 698; Parker *v.* Quinn (Utah), 64 Pac. Rep. 961; Willard *v.* Pike, 59 Vt. 202; Petersburg *v.* Petersburg Benev. Mech. Soc., 78 Va. 431; Staunton *v.* Mary Baldwin Sem. (Va.), 39 S. E. Rep. 596; Thurston County *v.* Sisters of Charity, 14 Wash. 264; St. Joseph's Hosp. Assoc. *v.* Ashland County, 96 Wis. 636. In the absence of a statute exempting foreign charitable corporations from the collateral inheritance tax, the courts cannot declare them exempt on the ground that gifts for promotion of charity, education, and religion should be encouraged: Prime's Estate, 136 N. Y. 347. See Alfred Univ. *v.* Hancock (N. J.), 46 Atl. Rep. 178. An orphan asylum may be liable for the collateral inheritance tax although its property is exempt from taxation: Miller *v.* Commonwealth, 27 Grat. 110.

¹ Phillips County *v.* Estelle, 42 Ark. 536; New Haven *v.* Board of Trustees, 59 Conn. 163; Hartford *v.* Hartford Theo. Sem., 66 Conn. 475; Yale Univ. *v.* New Haven, 71 Conn. 316; Mundy *v.* Van Hoose, 104 Ga. 292; Chicago Univ. *v.* People, 118 Ill. 565; Montgomery *v.* Wyman, 130 Ill. 17; People *v.* Ryan, 138 Ill. 263; People *v.* Board of Directors, 174 Ill. 177; McCullough *v.* Board of Review, 183 Ill. 373, 186 Ill. 15; Board of Directors *v.* People, 189 Ill. 439; Travelers' Ins. Co. *v.* Kent, 151 Ind. 349; Ottawa

Univ. *v.* Board of Com'rs, 48 Kan. 460; Henderson *v.* McCullagh, 89 Ky. 448; Blackman *v.* Houston, 39 La. An. 592; Lichentag *v.* Tax Collector, 46 La. An. 572; State *v.* Board of Assessors, 52 La. An. 223; Ferrell *v.* Penrose, 52 La. An. 1481; Mount Hermon Boys' School *v.* Gill, 145 Mass. 139; Williston Seminary *v.* County Com'rs, 147 Mass. 427; St. James Educ. Inst. *v.* Salem, 153 Mass. 185; Williams Coll. *v.* Assessors, 167 Mass. 505; Amherst Coll. *v.* Assessors, 173 Mass. 232; Detroit Home & Day School *v.* Detroit, 76 Mich. 521; State *v.* Bell, 43 Minn. 344; State *v.* Hamline Univ., 47 Minn. 316; Ramsey County *v.* Macalester Coll., 51 Minn. 437; Ramsey County *v.* Stryker, 52 Minn. 144; North St. Louis Gym. Soc. *v.* Hudson, 85 Mo. 32; St. Vincent's Coll. *v.* Schaefer, 104 Mo. 261; Kansas City *v.* Kansas City Med. Coll., 111 Mo. 141; State *v.* Mission Free School (Mo.), 62 S. W. Rep. 998; Omaha Med. Coll. *v.* Rush, 22 Neb. 449; Academy *v.* Irey, 51 Neb. 755; Watson *v.* Cowles (Neb.), 85 N. W. Rep. 35; New London *v.* Colby Acad., 69 N. H. 443; State *v.* Ross, 24 N. J. L. 497; State *v.* Chamberlain, 54 N. J. L. 549; Society *v.* New Brunswick, 55 N. J. L. 65; Englewood School *v.* Chamberlain, 55 N. J. L. 292; Montclair Mil. Acad. *v.* Bowden, 64 N. J. L. 214; Montclair Mil. Acad. *v.* State Board (N. J.), 47 Atl. Rep. 558; Chegaray *v.* New York, 13 N. Y. 220; Temple Grove Sem. *v.* Cramer, 98 N. Y. 121; Assoc. for Colored Orphans *v.* New York, 104 N. Y. 581; Catlin *v.* St. Paul's P. E. Church, 113 N. Y. 133; *In re* Vassar, 127 N. Y. 1; People *v.* Board of Assessors, 141 N. Y.

used for school purposes, it will not apply to property held merely for revenue.¹

Libraries. Where the advantages of a library are offered to the public, it is common to exempt it from taxation,² and the property also which is held for its purposes.³ And the private libraries of individuals are frequently exempted.⁴

Library and scientific institutions. The property of corporations or associations formed for library or scientific purposes is often exempted from taxation when occupied by them or their officers for the purposes of their organization.⁵

476; *People v. Barker*, 42 Hun 27; *St. Monica v. New York*, 55 Super. Ct. (N. Y.) 160; *Willamette Univ. v. Knight*, 35 Or. 33; *Appeal of Wagner Inst.*, 116 Pa. St. 555; *Northampton County v. Lafayette Coll.*, 128 Pa. St. 132; *Wagner Free Inst. v. Philadelphia*, 132 Pa. St. 612; *Philadelphia v. Overseers*, 170 Pa. St. 257; *White v. Smith*, 189 Pa. St. 222; *St. Joseph's Church v. Assessors*, 12 R. I. 19; *Brown Univ. v. Granger*, 19 R. I. 704; *Nashville v. Ward*, 16 Lea, 27; *University of South v. Skidmore*, 3 Pickle 155; *State v. Fisk Univ.*, 3 Pickle 233; *Cassiano v. Ursuline Acad.*, 64 Tex. 673; *Red v. Morris*, 72 Tex. 554; *St. Edward's Coll. v. Morris*, 82 Tex. 1; *Edmonds v. San Antonio*, 14 Tex. Civ. Ap. 155; *Willard v. Pike*, 59 Vt. 202; *Staunton v. Mary Baldwin Sem. (Va.)*, 39 S. E. Rep. 596; *Green Bay & M. Canal Co. v. Outagamie County*, 76 Wis. 587.

¹ *County Com'rs v. Colorado Sem.*, 12 Colo. 497; *Hartford v. Hartford Theo. Sem.*, 66 Conn. 475; *Yale Univ. v. New Haven*, 71 Conn. 316; *Foy v. Coe Coll.*, 95 Iowa 689; *Board of Directors v. People (Ill.)*, 61 N. E. Rep. 1022, and cases cited; *Stahl v. Kansas Educ. Assoc.*, 54 Kan. 542; *State v. Assessors*, 35 La. An. 668; *Wesleyan Acad. v. Wilbraham*, 99 Mass. 599; *Willamette Univ. v. Knight*, 35

Or. 33. Compare *University v. People*, 99 U. S. 309.

² See *Mercantile Library Co. v. Taylor*, 161 Pa. St. 155; *Providence Athaeneum v. Tripp*, 9 R. I. 559; *In re Lenox's Estate*, 9 N. Y. S. 895; *In re Vanderbilt's Estate*, 10 N. Y. S. 239.

³ A building belonging to an incorporated library association, partly used for a library, and partly leased for business purposes, is subject to taxation, not being expressly exempted by statute: *People v. Peoria Mercantile Library Assoc.*, 157 Ill. 369. Property of Young Men's Christian Association held to be exempt to the extent it is used for library purposes: *State v. Board of Assessors*, 52 La. An. 223.

⁴ A law library belonging to a private person is exempt under the tax-law of Michigan: *Patterson v. Board of Review (Mich.)*, 83 N. W. Rep. 1031.

⁵ See *Mount Hermon Boys' School v. Gill*, 145 Mass. 139; *St. James Educ. Inst. v. Salem*, 153 Mass. 185; *Salem Lyceum v. Salem*, 154 Mass. 15; *Salem Marine Soc. v. Salem*, 155 Mass. 329; *New England Theosoph. Corp. v. Boston*, 172 Mass. 60; *Phillips Acad. v. Andover*, 175 Mass. 118; *Harvard Coll. v. Cambridge*, 175 Mass. 145; *Auditor-General v. Women's Temp. Assoc.*, 119 Mich. 430; *Appeal of Wagner*

Church property. The property owned by religious societies, and made use of for the purposes of public worship, is also commonly exempted; the exemption being made uniform so as to embrace the property of all sects and denominations of worshipers.¹

Free Institute, 116 Pa. St. 555; *Regina v. Pocock*, 8 Q. B. 729. The Michigan statute exempting from taxation all personal property of literary and scientific institutions does not apply to the state university, but only to such institutions as are incorporated under the general laws of the state for literary and scientific purposes: *Auditor-General v. Regents*, 88 Mich. 467. And a musical society incorporated under another statute cannot claim exemption as an educational or scientific institution, even though one of its direct or indirect purposes or results is educational or scientific: *Attorney-General v. Detroit Common Council*, 113 Mich. 388.

¹ See *Gibbons v. District of Columbia*, 116 U. S. 404; *Connecticut Spiritualist. etc. Assoc. v. East Lynne*, 54 Conn. 152; *Manresa Inst. v. Norwalk*, 61 Conn. 228; *First Unitarian Soc. v. Hartford*, 66 Conn. 368; *People v. Anderson*, 117 Ill. 50; *People v. Ryan*, 138 Ill. 263; *People v. Young Men's Christian Assoc.*, 157 Ill. 403; *People v. Watseka Camp Meeting Assoc.*, 160 Ill. 576; *Kirk v. St. Thomas Church*, 70 Iowa 287; *First Congregational Church v. Linn County*, 70 Iowa 396; *Nugent v. Dilworth*, 95 Iowa 49; *Foxcroft v. Straw*, 86 Me. 76; *Foxcroft v. Piscataquis Valley Camp Meeting Assoc.*, 86 Me. 78; *Auburn v. Young Men's Christian Assoc.*, 86 Me. 244; *Salem Marine Soc. v. Salem*, 155 Mass. 329; *All Saints' Parish v. Brookline (Mass.)*, 59 N. E. Rep. 1003; *Ramsey County v. Church of the Good Shepherd*, 45 Minn. 229; *First Christian Church v. Beatrice*, 29 Neb. 432; *Scott v. Society of Russian Israelites*, 59 Neb. 571; *Young Men's Christian Assoc. v. Douglas*

County (Neb.), 83 N. W. Rep. 924; *Alton Bay Camp Meeting Assoc. v. Alton*, 69 N. H. 311; *State v. Silverthorne*, 52 N. J. L. 73; *Sisters of Peace v. Westervelt (N. J.)*, 48 Atl. Rep. 789; *Hebrew Free School Assoc. v. New York*, 99 N. Y. 488; *Assoc. for Colored Orphans v. New York*, 104 N. Y. 581; *Catlin v. St. Paul's P. E. Church*, 113 N. Y. 133; *Young Men's Christian Assoc. v. New York*, 113 N. Y. 187; *Church of St. Monica v. New York*, 118 N. Y. 91; *Sherrill v. Christ Church*, 121 N. Y. 701; *People v. Dohling*, 6 App. Div. (N. Y.) 86; *St. James Church v. New York*, 41 Hun 309; *Young Men's Christian Assoc. v. New York*, 44 Hun 102; *Black v. Brooklyn*, 51 Hun 581; *Congregation v. New York*, 52 Hun 507; *In re Van Kleck's Estate*, 55 Hun 472; *Board of Home Missions v. New York*, 91 Hun 642; *Shaarai Berocho v. New York*, 60 N. Y. Super. Ct. 479; *Congregation v. Board of Com'rs*, 115 N. C. 489; *Philadelphia v. Church of St. James*, 134 Pa. St. 207; *Trustees v. Gratz*, 139 Pa. St. 497; *Moore v. Taylor*, 147 Pa. St. 481; *Philadelphia v. Barber*, 160 Pa. St. 123; *Green Bay & M. Canal Co. v. Outagamie County*, 76 Wis. 587; *Katzer v. Milwaukee*, 104 Wis. 16. Mission house in corner of church building: *People v. Feitner (N. Y.)*, 61 N. E. Rep. 762. Exemption of church property held not to include a parsonage or rectory: *St. Mark's Church v. Brunswick*, 78 Ga. 541; *State v. Board of Assessors*, 52 La. An. 223; *Third Cong. Soc. v. Springfield*, 147 Mass. 396; *Hennepin County v. Grace*, 27 Minn. 503; *Ramsey County v. Church of the Good Shepherd*, 45 Minn. 229; *State v. Lyon*, 32 N. J. L. 360; *State v. Krollman*, 38

In any of these cases if the property which is exempted for a particular use is leased or otherwise appropriated to any other use, the exemption is lost;¹ but school property will not lose

N. J. L. 323; *State v. Axtell*, 41 N. J. L. 117; *People v. Collison*, 22 Abb. N. C. (N. Y.) 52; *People v. O'Brien*, 53 Hun 580; *Gerke v. Purcell*, 25 Ohio, St. 229. Rented parsonage held exempt: *Gray v. La Fayette County*, 65 Wis. 567. Modified exemption of rectory: *People v. Feitner* (N. Y.), 61 N. E. Rep. 762. Grounds of a camp-meeting association of a church which are devoted exclusively to religious purposes are not subjected to taxation because provision is made thereon—without view to profit—for lodging and boarding those who attend the meeting: *David v. Cincinnati Camp Meeting Assoc.*, 57 Ohio St. 257. A bequest to a religious society in another state, which by the laws of that state was exempt from taxation, was subject to the special legacy tax: *Minot v. Winthrop*, 162 Mass. 133; *Prime's Estate*, 136 N. Y. 347; *Smith's Estate*, 77 Hun 134.

¹ *Brodie v. Fitzgerald*, 57 Ark. 445; *New Haven v. Sheffield*, 30 Conn. 160; *First Unitarian Soc. v. Hartford*, 66 Conn. 368; *Hartford v. Hartford Theo. Sem.*, 66 Conn. 476; *Yale Univ. v. New Haven*, 71 Conn. 316; *Massenburg v. Grand Lodge*, 81 Ga. 212; *Mundy v. Van Hoose*, 104 Ga. 292; *Ottawa Univ. v. Board of Com'rs*, 48 Kan. 460; *New Orleans v. Russ*, 27 La. An. 413; *Armand v. Dumas*, 28 La. An. 403; *Lee v. New Orleans*, 28 La. An. 426; *State v. Board of Assessors*, 34 La. An. 574; *State v. Assessors*, 35 La. An. 668; *Enaut v. Tax Collectors*, 36 La. An. 804; *State v. Board of Assessors*, 52 La. An. 223; *Foxcroft v. Straw*, 86 Me. 76; *County Com'rs v. Sisters of Charity*, 48 Md. 34; *Appeal Tax Court v. Grand Lodge*, 50 Md. 421; *Appeal Tax Court v. Baltimore Acad.*, 50 Md. 437; *Pierce*

v. Cambridge, 2 Cush. 611; *Proprietors, etc. v. Lowell*, 1 Met. 538; *Old South Soc. v. Boston*, 127 Mass. 378; *Williams Coll. v. Assessors*, 167 Mass. 505; *Auditor-General v. Women's Temp. Assoc.*, 119 Mich. 430; *Ridgely Lodge v. Redus* (Miss.), 29 South. Rep. 163; *Wyman v. St. Louis*, 17 Mo. 335; *Fitterer v. Crawford*, 157 Mo. 51; *Adelphia Lodge v. Crawford*, 157 Mo. 356; *Young Men's Christian Assoc. v. Douglas County* (Neb.), 83 N. W. Rep. 924; *New Men's Christian Assoc. v. Keene* (N. H.), 46 Atl. Rep. 186; *Trustees v. Paterson*, 61 N. J. L. 420; *State v. Brakeley* (N. J.), 50 Atl. Rep. 589; *Hebrew Free School Assoc. v. New York*, 99 N. Y. 488; *Congregation v. Board of Com'rs*, 115 N. C. 489; *Hibernian Ben. Soc. v. Kelly*, 28 Or. 173; *Willamette Univ. v. Knight*, 35 Or. 33; *Philadelphia v. Barber*, 160 Pa. St. 123; *Mercantile Library Co. v. Taylor*, 161 Pa. St. 155; *Morris v. Lone Star Chapter*, 68 Tex. 698; *Parker v. Quinn* (Utah), 64 Pac. Rep. 961. A theological institute was held, upon the evidence, not to have diverted the use of its property so as to subject the same to taxation: *People v. Baptist Theo. Union*, 171 Ill. 304. Mere intention to use property for a purpose rendering it exempt from taxation will not preclude its being taxed so long as occupied for some other purpose: *Young Men's Christian Assoc. v. Douglas County* (Neb.), 83 N. W. Rep. 924. But a lot purchased by a military organization with intent to erect a building thereon, but abandoned and afterwards sold and the proceeds applied to another lot, was held exempt from taxation during the interval: *Philadelphia v. Keystone Battery*, 169 Pa. St. 526. Grounds and buildings owned by a

its exemption by being leased in vacation,¹ neither will church property by a merely incidental and occasional use for schools,² or by occasional renting for entertainments.³

Cemeteries. The property of cemetery associations is also commonly exempted, so far as it is actually appropriated to the purposes of burial.⁴ But a mere appropriation on paper is not sufficient for the purpose,⁵ and the appropriation of one acre in forty would not be sufficient to give exemption to the whole.⁶

Other exemptions, less often allowed, are mentioned in the margin.⁷

commandery of Knights Templars, but used only four days each year for "the appropriate objects of the organization," and used at other times as a summer resort for members and their families, were held not exempt: *Lacy v. Davis* (Iowa), 83 N. W. Rep. 784.

¹ *Temple Grove Sem. v. Cramer*, 98 N. Y. 121; s. c. below, 26 Hun, 309.

² *St. Mary's Church v. Tripp*, 14 R. I. 307.

³ *First Unitarian Soc. v. Hartford*, 66 Conn. 368. For questions of exemptions under these heads, see, further, *Griswold Coll. v. Iowa*, 46 Iowa 275; *Laurent v. Muscatine*, 59 Iowa 404; *Fort Des Moines Lodge v. Polk County*, 56 Iowa 34; *Theological Seminary v. People*, 101 Ill. 578; *Monticello Seminary v. People*, 106 Ill. 398; *Redemptionists v. Howard County*, 50 Md. 449; *Appeal Tax Court v. St. Peter's Academy*, 50 Md. 321; *Same v. St. Mary's Seminary*, 50 Md. 333; *Same v. Red Men's Hall*, 50 Md. 352; *Temple Grove Seminary v. Cramer*, 33 Hun 309; *People v. Seamen's Friend Society*, 87 Ill. 246; *Chapel of Good Shepherd v. Boston*, 120 Mass. 212; *Workingmen's Aid Society v. Lynn*, 136 Mass. 283; *Redemptionist Fathers v. Boston*, 129 Mass. 178; *First Presb. Church v. New Orleans*, 30 La. An. 259; *Trinity Church v. Boston*, 118 Mass. 164.

⁴ See *People v. Cemetery Co.*, 86 Ill. 336; *Rosehill Cemetery Co. v. Kern*, 147 Ill. 483; *Colston v. Eastern Cemetery Co. (Ky.)*, 15 S. W. Rep. 245; *Negley v. Henderson (Ky.)*, 55 S. W. Rep. 554; *Metairie Cemetery Assoc. v. Assessors*, 37 La. An. 32; *State v. Board of Assessors*, 52 La. An. 223; *Proprietors v. Board*, 150 Mass. 12; *Proprietors v. Commissioners*, 152 Mass. 408; *State v. Lange*, 16 Mo. Ap. 468; *Buffalo Cemetery Assoc. v. Buffalo*, 118 N. Y. 61; *People v. Pratt*, 129 N. Y. 68; *Newark v. Mt. Pleasant Cemetery Co.*, 58 N. J. L. 168; *State v. Clinton*, 49 N. J. L. 370. As to what would be exempt as a church burial-ground, see *Appeal Tax Court v. Zion's Church*, 50 Md. 352; *Brown's Heirs v. Pittsburgh (Pa.)*, 16 Atl. Rep. 43. As to exemption from special assessments, see *Oakland Cemetery Assoc. v. St. Paul*, 36 Minn. 529; *Philadelphia v. Union Burial Ground Soc.*, 178 Pa. St. 533; *Philadelphia v. Church of St. James*, 134 Pa. St. 207.

⁵ *Woodland Cemetery v. Everett*, 118 Mass. 354.

⁶ *Mulroy v. Churchman*, 60 Iowa 717. An old burial-ground held by a cemetery company is exempt: *Swan Point Cemetery v. Tripp*, 14 R. I. 199.

⁷ Exemption to encourage the planting of trees: *Shiner v. Jacobs*, 62

Exemptions in these cases are granted on considerations of general public policy; and, being freely granted, they may as freely be recalled when the legislative view of public policy may have changed. In law they are to be regarded as favors or privileges to the class exempted, granted and to be held at the pleasure of the sovereign power. There is no pledge by the state that they shall be permanent, and no wrong done when they are recalled.¹ But repeals by implication of exemptions are not favored.²

State indebtedness. A state sometimes makes the bonds or other evidences of indebtedness issued by itself non-taxable. When this is done before the indebtedness is incurred, a con-

Iowa 392. Fruit trees are not exempt from taxation as "growing crops:" Cottle v. Spitzer, 65 Cal. 456. As to the exemption in New York of federal pension-money and property bought therewith, see People v. Feitner, 157 N. Y. 363; People v. Williams, 6 Misc. Rep. (N. Y.) 185; In re Peek, 80 Hun 122; People v. Wells, 10 Misc. Rep. (N. Y.) 195; People v. Williams, 80 Hun 501. Exemption from license tax of disabled or indigent Confederate soldier: Holliman v. Hawkinsville, 109 Ga. 107; Hartfield v. Columbus, 109 Ga. 112. Under a constitutional provision that the legislature shall except from taxation \$1,000 worth of personal property in the hands of "each taxpayer," a married woman is entitled to such exemption though her husband is entitled to, and has been allowed, the same exemption; and where the *situs* of such taxpayer's personal property is within the limits of a certain municipal corporation, though she resides outside, she is entitled to the exemption unless it has been allowed to her elsewhere on other taxable personalty: First Nat. Bank v. Morristown, 93 Tenn. 208. As to what constitutes land used for farming or agricultural purposes within statutes exempting from taxation lands used for such purposes, see Allen v. Daven-

port, 107 Iowa 90; Windsor v. Polk County, 109 Iowa, 156; Simms v. Paris (Ky.), 1 S. W. Rep. 543; People v. Com'rs of Taxes, 3 N. Y. S. 674.

¹ *Ante*, p. 111. See Hospital v. Philadelphia, 24 Pa. St. 229; Commonwealth v. Fayette, etc. R. Co., 55 Pa. St. 452; Brewster v. Hough, 10 N. H. 138; St. Joseph v. Railroad Co., 39 Mo. 476; State v. Newark, 50 N. J. L. 66; State v. Dulle, 48 Mo. 282; Tomlinson v. Jessup, 15 Wall. 454; Baltimore & O. R. Co. v. Jefferson County, 29 Fed. Rep. 305; Appeal Tax Court v. Grand Lodge, 50 Md. 421; Same v. Regents, 50 Md. 457; Shiner v. Jacobs, 62 Iowa 392; Miller v. Hageman (Iowa), 86 N. W. Rep. 281; Probasco v. Moundsville, 11 W. Va. 501; Yazoo & M. V. R. Co. v. Adams (Miss.), 28 South. Rep. 956, 969; State v. Hannibal, etc. R. Co., 60 Mo. 143; Wilmington & W. R. Co. v. Alsbrook, 110 N. C. 137; Louisville Water Co. v. Clark, 143 U. S. 1. The case last cited points out that where an exemption from taxation was withdrawn, the obligation which was the consideration for the exemption fell with it. For a discussion as to whether an exemption is a contract, see International, etc. R. Co. v. Anderson County, 59 Tex. 654.

² Owens v. Yazoo & M. V. R. Co., 74 Miss. 821.

tract is established between the state and those who become its creditors, which precludes withdrawing the exemption; but one state cannot make exemptions for others; and the obligation, though not taxable by the state issuing it, may be taxed in other states if held there.¹

Taxability presumed. As taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain;² and the burden of establishing it is upon him who claims it.³

¹ *Appeal Tax Court v. Patterson*, 50 Md. 354; *Bonaparte v. Tax Court*, 104 U. S. 592; *State v. Board of Assessors*, 47 La. An. 1644; *Home Ins. Co. v. Board of Assessors*, 48 La. An. 451. Under a statute providing that "all bonds made by any state which were not exempted from taxation by the law of said state authorizing the issue of such bonds; all bonds used by any territory, or by any corporation shall be liable to be valued to the representative owners," it was held that the only exemption was of the bonds of a state which by the law authorizing their issue were exempted from taxation: *Bonaparte v. State*, 63 Md. 465. Municipal bonds upon which the municipality has, by authority of an act of the legislature prior to the adoption of the constitutional amendment on the subject of

taxation, agreed to pay all taxes, are taxable, but the municipality is bound by such agreement, and must pay such taxes: *Merchants' Ins. Co. v. Newark*, 54 N. J. L. 138. In *Bank v. Smith*, 7 Ohio St. 42, and *People v. Home Ins. Co.*, 29 Cal. 533, a tax on the bonds of the respective states was held valid.

² See *Providence Bank v. Billings*, 4 Pet. 514; *Minot v. Philadelphia, etc. R. Co.*, or the *Delaware Railroad Tax*, 18 Wall. 206; *Trask v. Maguire*, 18 Wall. 391; *Northern Mo. R. Co. v. Maguire*, 20 Wall. 46; *Farrington v. Tennessee*, 95 U. S. 584; *Gas Light Co. v. Shelby County Tax Dist.*, 109 U. S. 398; *Railroad Co. v. Wright*, 116 U. S. 235; *Vicksburg, S. & P. R. Co. v. Dennis*, 116 U. S. 665; *Tennessee v. Whitworth*, 117 U. S. 136; *Chicago, B. & K. C. R. Co. v. Missouri*, 120 U. S.

³ *Board of Trustees v. Bell County Coke, etc. Co.*, 96 Ky. 68; *All Saints' Parish v. Brookline (Mass.)*, 59 N. E. Rep. 1003; *Courtney v. Missoula County*, 21 Mont. 591; *Electric Storage Battery v. State Board*, 60 N. J. L. 66; *Medical Soc. v. Neff*, 34 App. Div. (N. Y.) 83; *Parker v. Quinn (Utah)*, 64 Pac. Rep. 961. One who claims that his property is not subject to taxation must show affirmatively the facts rendering it exempt: *Watson v. Cowles (Neb.)*, 85 N. W. Rep. 35. A

claim that a company is exempted by its charter from taxation must be proved beyond all reasonable doubt: *Adams v. Yazoo & M. V. R. Co.*, 77 Miss. 194. Where the charter of a Masonic association exempts its property "so long as it shall be used for Masonic and charitable purposes," the burden is on a city seeking to tax the property to show that it is not so used: *Newport v. Masonic Temple Assoc.*, 103 Ky. 592.

Strict construction of exemptions. It is also a very just rule that, when an exemption is found to exist, it shall not be enlarged by construction. On the contrary it ought to receive a strict construction; for the reasonable presumption is that

569. 122 U. S. 561; *Pickard v. East Tennessee, V. & G. R. Co.*, 130 U. S. 637; *New Orleans City & L. R. Co. v. New Orleans*, 143 U. S. 192; *Phoenix F. & M. Ins. Co. v. Tennessee*, 161 U. S. 174; *Bank of Commerce v. Tennessee*, 161 U. S. 134, 163 U. S. 416; *Henderson Bridge Co. v. Henderson*, 173 U. S. 592, 617, 618; *Citizens' Bank v. Board of Assessors*, 54 Fed. Rep. 1002; *State v. Kidd*, 125 Ala. 413; *Biscoe v. Coulter*, 18 Ark. 423; *Hart v. Plum*, 14 Cal. 148; *People v. Whyler*, 41 Cal. 351; *Wright v. Railroad Co.*, 64 Ga. 783; *Mundy v. Van Hoose*, 104 Ga. 292; *Price Co. v. Atlanta*, 105 Ga. 358; *Salisbury v. Lane (Idaho)*, 63 Pac. R. 383; *In re Swigert*, 119 Ill. 83; *People v. Chicago*, 124 Ill. 636; *Montgomery v. Wyman*, 130 Ill. 17; *Cemetery Co. v. Kern*, 147 Ill. 483; *Bloomington Cemetery Assoc. v. People*, 170 Ill. 377; *People v. Board of Directors*, 174 Ill. 177; *Orr v. Baker*, 4 Ind. 86; *Indianapolis v. McLean*, 8 Ind. 328; *Madison v. Fitch*, 18 Ind. 33; *Methodist Church v. Ellis*, 38 Ind. 3; *Washburn Coll. v. Shawnee County*, 8 Kan. 344; *Vail v. Beach*, 10 Kan. 442; *Miami County v. Brackenridge*, 12 Kan. 114; *Bradley v. McAtee*, 7 Bush 667; *Louisville Canal Co. v. Commonwealth*, 7 B. Monr. 160; *Deposit Bank v. Daveiss County*, 102 Ky. 174; *Municipality v. Railroad Co.*, 10 Rob. (La.) 187; *State v. Eckendorf*, 46 La. An. 131; *Ferrell v. Penrose*, 52 La. An. 1481; *Portland, S. & P. R. Co. v. Saco*, 60 Me. 196; *Auburn v. Young Men's Christian Assoc.*, 86 Me. 244; *Howell v. Maryland*, 3 Gill 14; *Gordon v. Baltimore*, 5 Gill 231; *Baltimore v. State*, 15 Md. 376; *State v. Railroad Co.*, 48 Md. 73; *Frederick Electric Light, etc. Co. v. Frederick City*, 84 Md. 599; *Baltimore, C. & A. R. Co. v. Ocean City*, 89 Md. 89; *Harvard Coll. v. Boston*, 104 Mass. 470; *Redemptionist Fathers v. Boston*, 129 Mass. 178; *All Saints' Parish v. Brookline (Mass.)*, 59 N. E. Rep. 1003; *St. Peter's Church v. Scott County*, 12 Minn. 395; *Water Com'rs v. Auditor General*, 115 Mich. 546; *Anderson v. State*, 23 Miss. 459; *Frantz v. Dobson*, 64 Miss. 631; *Yazoo & M. V. R. Co. v. Thomas*, 65 Miss. 553; *Adams v. Yazoo & M. V. R. Co.*, 77 Miss. 194; *Hannibal, etc. R. Co. v. Shacklett*, 30 Mo. 550; *Washington Univ. v. Rowse*, 42 Mo. 308; *Pacific R. Co. v. Cass County*, 53 Mo. 17; *State v. Arnold*, 136 Mo. 446; *Springfield v. Smith*, 138 Mo. 645; *Fitterer v. Crawford*, 157 Mo. 51; *Adelphia Lodge v. Crawford*, 157 Mo. 356; *Hope Mining Co. v. Kennon*, 3 Mont. 35; *Courtney v. Missoula County*, 21 Mont. 591; *Watson v. Cowles (Neb.)*, 85 N. W. Rep. 35; *Franklin St. Soc. v. Manchester*, 60 N. H. 342; *State v. Parker*, 32 N. J. L. 476; *State v. Woodruff*, 37 N. J. L. 139; *State v. Elizabeth*, 37 N. J. L. 330; *People v. Commissioners*, 95 N. Y. 554; *People v. Willis*, 133 N. Y. 383; *People v. Peck*, 157 N. Y. 51; *Lima v. Cemetery Assoc.*, 42 Ohio St. 128; *Union Pac. R. Co. v. Philadelphia*, 83 Pa. St. 429; *Carpenter v. School Trustees*, 12 R. I. 574; *Stewart v. Davis*, 3 Murphy 244; *State v. Town Council*, 12 Rich. 330; *Martin v. Charleston*, 13 Rich. Eq. 50; *State v. Bank of Smyrna*, 2 Houst. 99; *Wilson v. Gaines*, 9 Baxt. 551; *State v. Butler*, 13 Lea 406; *Memphis v. Union & P. Bank*, 91 Tenn. 546; *Memphis v. Home Ins. Co.*, 91 Tenn. 558; *Memphis v. Memphis City Bank*, 91 Tenn. 574; *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684; *Western Union Tel. Co.*

the state has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant.¹ On this ground it is held that an exemption of prop-

v. Harris (Tenn. Ch. Ap.), 52 S. W. Rep. 748; *Judge v. Spencer*, 15 Utah 242; *Union Refrig. Transit Co. v. Lynch*, 18 Utah 378; *Parker v. Quinn* (Utah), 64 Pac. Rep. 961; *Thomas v. Sneed* (Va.), 39 S. E. Rep. 586; *Baltimore & O. R. Co. v. Marshall County*, 3 W. Va. 319; *Same v. Wheeling*, 3 W. Va. 372; *Katzer v. Milwaukee*, 104 Wis. 16; *Douglas County Agric. Soc. v. Douglas County*, 104 Wis. 429; *Waller v. Hughes* (Ariz.), 11 Pac. Rep. 122; *Bridge Co. v. District of Columbia*, 1 Mackey 217; *Baltimore & O. R. Co. v. District of Columbia*, 2 Mackey 122. It being the policy of the revenue law to tax all private property, mines and mineral lands, the title to which was in a private owner, were held subject to taxation: *Salisbury v. Lane* (Idaho), 63 Pac. Rep. 383. Under the general rule that all property is liable to taxation for both state and county purposes, and under a statute authorizing the taxation by a county of "all the property of turnpike roads," a turnpike road itself was held taxable for county purposes: *Frankfort, L. etc. Turnpike Co. v. Commonwealth*, 82 Ky. 386. Where there is any doubt as to whether the property is liable to taxation, the property should be assessed, and the owner left to his remedy in the courts: *Ferrell v. Penrose*, 52 La. An. 1481. The neglect or omission of the taxing officers in previous years to assess the property cannot control the duty imposed on their successors, or the power of the legislature, on the legal construction of the statute under which exemption is claimed: *Vicksburg, S. & P. R. Co. v. Dennis*, 116 U. S. 665; *Hibernian Ben. Soc. v. Kelly*, 28 Or. 173; *St. Louis, I. M. etc.*

R. Co. v. State, 47 Ark. 323; *People v. Roberts*, 155 N. Y. 408. If by its charter a ferry company is not to be taxed higher than any other ferry company, this provision is not in itself an exemption, and is not violated unless some other ferry company is taxed less: *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365. Whether a license fee is a tax within the meaning of the provision, see *Same v. Same*, 102 Ill. 560. A railroad company having a perpetual lease of a road, held not to be owner so as to be entitled to such a statutory exemption: *State v. Housatonic R. Co.*, 48 Conn. 44. Where a corporation by its charter is exempt from taxation, an amendment of the charter which is accepted by it may repeal the exemption: *Petersburgh v. Railroad Co.*, 29 Grat. 773. An exemption given to a railroad company by its charter was held not to extend to a branch road constructed after the adoption of a constitution forbidding exemptions: *Chicago, B. & K. C. R. Co. v. Missouri*, 120 U. S. 569, 122 U. S. 561. The mere fact that the statutes do not fix the method of valuing the franchises of an electric street-railway company for the purposes of taxation does not render such franchises exempt from taxation: *State v. Anderson*, 90 Wis. 550.

¹ *Erie Railway v. Pennsylvania*, 21 Wall. 492; *Bank of Commerce v. Tennessee*, 104 U. S. 493; *Vicksburg, S. & P. R. Co. v. Dennis*, 116 U. S. 665; *Railroad Co. v. Thomas*, 132 U. S. 174; *Yazoo & M. V. R. Co. v. Board of Levee Com'rs*, 132 U. S. 190; *New Orleans City & L. R. Co. v. New Orleans*, 143 U. S. 192; *People v. Cook*, 148 U. S. 397; *Keokuk & M. R. Co. v. Missouri*,

erty from taxation will not preclude business or privilege taxes being imposed on the favored class,¹ and that bequests to col-

152 U. S. 301; *Winona & St. P. L. Co. v. Minnesota*, 159 U. S. 526; *Ford v. Delta, etc. Co.*, 164 U. S. 662; *Louisville, etc. Co. v. Gaines*, 3 Fed. Rep. 266; *Walters v. Western & A. R. Co.*, 68 Fed. Rep. 1002; *Salisbury v. Lane* (Idaho), 63 Pac. Rep. 383; *People v. Anderson*, 117 Ill. 50; *In re Swigert*, 123 Ill. 267; *Montgomery v. Wyman*, 130 Ill. 17; *People v. Wabash R. Co.*, 138 Ill. 85; *People v. Watseka Camp-meeting Assoc.*, 160 Ill. 576; *People v. Board of Directors*, 174 Ill. 177; *McCullough v. Board of Review*, 183 Ill. 373; *Conklin v. Cambridge*, 58 Ind. 130; *South Bend v. University*, 69 Ind. 344; *Read v. Yaeger*, 104 Ind. 195; *Miller v. Hageman* (Iowa), 86 N. W. Rep. 381; *Newport v. Masonic Temple Assoc.* (Ky.), 56 S. W. Rep. 405; *German Bank v. Louisville* (Ky.), 56 S. W. Rep. 504; *Baton Rouge, etc. R. Co. v. Kirkland*, 33 La. An. 622; *New Orleans v. New Orleans Coffee Co.*, 46 La. An. 86; *State v. American Sugar Refining Co.*, 51 La. An. 562; *Plaisted v. Lincoln*, 62 Me. 91; *Buchanan v. County Com'rs*, 47 Md. 286; *Sindall v. Baltimore* (Md.), 49 Atl. Rep. 645; *Redemptionist Fathers v. Boston*, 129 Mass. 180; *Lake Shore & M. S. R. Co. v. Grand Rapids*, 102 Mich. 374, 380; *Water Com'rs v. Auditor-General*, 115 Mich. 546; *Washburn Memorial Orphan Asylum v.*

State, 73 Minn. 343; *Yazoo & M. V. R. Co. v. Thomas*, 65 Miss. 553; *State v. Arnold*, 136 Mo. 446; *Springfield v. Smith*, 138 Mo. 645; *Fitterer v. Crawford*, 157 Mo. 51; *Adelphia Lodge v. Crawford*, 157 Mo. 236; *Young Men's Christian Assoc. v. Douglas County* (Neb.), 83 N. W. Rep. 924; *Lincoln Street R. Co. v. Lincoln* (Neb.), 84 N. W. Rep. 802; *Engstad v. Grand Forks County* (N. D.), 84 N. W. Rep. 577; *State v. Collector*, 38 N. J. L. 270; *State v. Fuller*, 40 N. J. L. 328; *People v. Commissioners of Taxes*, 82 N. Y. 459, 95 N. Y. 554; *People v. Peck*, 157 N. Y. 51; *Richmond, etc. R. Co. v. Alamance County*, 76 N. C. 212; *Crawford v. Burrell*, 53 Pa. St. 219; *Chadwick v. Maginnes*, 94 Pa. St. 117; *Commonwealth v. Lackawana Iron, etc. Co.*, 129 Pa. St. 346; *Hand v. Savannah, etc. R. Co.*, 12 S. C. 315; *Western Union Tel. Co. v. Harris* (Tenn. Ch. Ap.), 52 S. W. Rep. 748; *Judge v. Spencer*, 15 Utah 242; *Union Refrig. Transit Co. v. Lynch*, 18 Utah 378; *Westmore Lumber Co. v. Orne*, 48 Vt. 90; *Commonwealth v. Chesapeake & O. R. Co.*, 27 Grat. 344; *Thurston v. Sisters of Charity*, 14 Wash. 264; *Yates v. Milwaukee*, 92 Wis. 352. "Taxation is an act of sovereignty, to be performed, so far as it conveniently can be, with justice and equality to all. Exemptions, no

¹ *New Orleans v. Citizens' Bank*, 167 U. S. 371; *Davis v. Macon*, 64 Ga. 128; *New Orleans v. Savings, etc. Co.*, 31 La. An. 637; *New Orleans v. Canal Bank*, 32 La. An. 104; *New Orleans v. State Nat. Bank*, 34 La. An. 892; *Harkreader v. Lebanon & N. T. Co.*, 101 Tenn. 680. See *New Orleans v. People's Bank*, 32 La. An. 82; *Royster Guano Co. v. Tarboro*, 126 N. C. 68. A statute providing that the shares, capital, and profits

of any bank electing to pay to the state a tax of a certain amount shall be exempt from all other taxation under the laws of the state, does not exempt banks from a license under the police power: *Oil City v. Oil City Trust Co.*, 151 Pa. St. 454. One who keeps a cigar stand is not exempt from the privilege tax because he also runs another business that is licensed: *Knoxville Cigar Co. v. Cooper*, 99 Tenn. 472.

leges, etc., may be taxed under the general statute taxing bequests, though after being received they would be exempt under the general statute exempting the property of such in-

matter how meritorious, are of grace, and must be strictly construed." This was said in the case of *Crawford v. Burrell*, *supra*, where the court felt compelled to hold that a married woman was subject to a tax for the raising of county moneys, though her husband was actually in the military service. See, also, *Lord Kolchester v. Kewney*, Law R. 1 Exch. 368; *Platt v. Rice*, 10 Watts 352. In construing exemptions, the person claiming the benefit of such exemption must bring himself strictly within its plain and obvious intendment: *State v. Eckendorf*, 46 La. An. 131. The principle that exemptions from taxation are to be construed strictly does not apply where there is no language in the act justifying or requiring construction: *Milwaukee Electric R. Co. v. Milwaukee*, 95 Wis. 42. Where the charter of a theological seminary exempted from taxation property belonging or appertaining to the seminary, and also provided that the act "shall be construed liberally in all courts for the purposes therein expressed," it was held that such purposes should be ascertained by the application of the general rules of construction, and that after the purpose was ascertained liberal rules would be applied to give it effect: *People v. Board of Directors*, 174 Ill. 177. The fact that loans made by a bank are secured by property that is exempt from taxation does not render such loans non-taxable: *Savings & L. Soc. v. San Francisco* (Cal.), 63 Pac. Rep. 665; *San Francisco v. La Societe* (Cal.), 63 Pac. Rep. 1016. Shares of stock of a manufacturing corporation, when held and owned by an insurance company, are tax-

able as part of the assets of such company, though the company's capital, machinery, and other property are exempt by the constitution: *State v. Board of Assessors*, 47 La. An. 1498. The fact that, when whiskey is released from bond, certain county bonds, for which a local tax was levied on the whiskey while in bond, have been satisfied by taxes collected from other property, will not exempt the whiskey from the tax: *Wathen v. Young*, 103 Ky. 36. An exemption of mortgages from taxation will not be held to include so-called building association mortgages, in which the sum to be paid eventually is uncertain: *Appeal Tax Court v. Rice*, 50 Md. 302. Under a statute providing for the taxation of all corporate bonds owned by residents of the state, and exempting mortgages on property wholly within the state, bonds secured by mortgages on property partly within and partly without the state are taxable: *Simpson v. Hopkins*, 82 Md. 478. A statute exempting "stocks and other personal estate owned by citizens of this state, situate and being out of this state, upon which taxes shall have been actually assessed," does not exempt a mortgage owned by a resident on land in another state, on which land has been assessed for taxes: *State v. Darcy*, 51 N. J. L. 140. An exemption of lands from taxation for general city purposes does not exempt from school taxation: *South Bend v. University*, 69 Ind. 344. An exemption of the lands of a cemetery company will cover its improvements: *Appeal Tax Court v. Baltimore Cemetery Co.*, 50 Md. 432. But not a separate adjoining lot used for an office and custodian's dwell-

stitutions.¹ So an academy of arts is not exempted under an exemption of "universities, colleges, academies, and school-

ing, and containing a well that supplies water for the grounds: *Bloomington Cemetery Assoc. v. People*, 170 Ill. 377. Lands held by an agricultural society under lease are not "owned" by, nor are they the "property" of, such society so as to be exempt from taxation: *Douglas County Agric. Soc. v. Douglas County*, 104 Wis. 429. A statute providing that "real property of non-resident owners, improved or occupied by a servant or agent, shall be subject to assessment of highway labor and at same rate as real property of resident owners," does not exempt from such tax non-resident lands not so occupied: *Ensign v. Barse*, 107 N. Y. 329. The exemption of "an endowment or fund of any religious society," etc., will not embrace lands: *State v. Krollman*, 38 N. J. L. 323, 574; see *State v. Lyon*, 32 N. J. L. 360. Nor can a legacy "towards the building of a new church, or the renovation of the present one," be treated as already a church edifice so far as to be exempt: *Sherrill v. Christ Church*, 121 N. Y. 701. An exemption of "mines and mining claims" allows of the taxation of surface improvements: *Gold Hill v. Caledonia, etc. Co.*, 5 Sawy. 575. But it covers an engine and boiler built into a brick foundation and firmly fixed by bolts, and used in working a mine: *Mammoth Mining Co. v. Juab County*, 10 Utah 232. Where a statute provides that every foreign railroad company which extends its line within the state shall be subject to taxation, such a company will be liable for taxes upon a line purchased from a domestic corporation which was exempt from taxation: *Railway Co. v. Counties*, 5 Dill. 289. See, for a somewhat similar point, *Hoge v. Railroad Co.*, 99 U. S. 348.

A provision in a city charter that "no land embraced within the city's limits, and outside of ten-acre lots as originally laid off, shall be assessed and taxed by the village council unless the same is divided or laid out into lots of five acres or less, and unless the same is actually used and devoted to farming purposes, has no reference to bridges, their approaches, etc.: *Henderson Bridge Co. v. Henderson*, 173 U. S. 592. A city charter providing that merchants and others paying a license or specific tax on their business shall be exempt from any *ad valorem* tax thereon does not exempt from *ad valorem* taxation the property of a gas company which pays a license or specific tax imposed by the city council: *Newport Light Co. v. Newport (Ky.)*, 20 S. W. Rep. 434. Gas meters, gas mains, and gas pipes are not exempt as part of a gas company's "machinery actually used in the manufacture" of gas: *Consolidated Gas Co. v. Baltimore*, 62 Md. 588. Gas pipes, meters, and lamp posts belonging to a gas company are not exempt as "machinery in factories": *Covington Gas-Light Co. v. Covington*, 84 Ky. 94. A saw-mill held not exempt as "property employed in the manufacture of textile fabrics, machinery, agricultural implements and furniture, and other articles of wood: *Jones v. Raines*, 35 La. An. 996. An exemption of unpatented mines was held not to extend to their property: *Hope Mining Co. v. Kennon*, 3 Mont. 35.

¹ *Barringer v. Cowan*, 2 Jones Eq. 436. See *Miller v. Commonwealth*, 27 Grat. 110; *Prime's Estate*, 136 N. Y. 347; *Minot v. Winthrop*, 162 Mass. 113. See, for a peculiar case, *Massachusetts General Hospital v. Somerville*, 101 Mass. 319.

houses,"¹ and a statute for the exemption of factories will not be applied to such as were erected previous to its passage.² Nor will the exemption from taxation of the property of soldiers in actual service exempt from a tax actually imposed before the soldier enlisted.³ The rule of strict construction is not, however, to be extended so far as to defeat the legislative purpose.⁴

Local assessments. The most striking illustration of the rule of strict construction of exemptions is seen in the case of special assessments for local improvements, such as the paving and repair of streets, etc. It is almost universally held that a general exemption from taxation will not extend to such assessments.⁵ In the leading case the words of the exemption were

¹ *Academy v. Philadelphia*, 22 Pa. St. 496.

² *Baugh v. Ryan*, 51 Ala. 212.

³ *Tobin v. Morgan*, 70 Pa. St. 229.

⁴ Under a statute exempting certain persons "from military duty, road-tax," etc., the term "road-tax" means statutory duty of working the public roads, where, unless so construed, it would be inoperative: *Lewin v. State*, 77 Ala. 45. A statute exempting from a road-tax the property of all persons residing within the limits of an incorporated village or town embraces the property of non-residents; the spirit of the law embraces all who own property there: *State v. Wabash, St. L. etc. R. Co.*, 90 Mo. 166.

⁵ *Illinois Cent. R. Co. v. Decatur*, 147 U. S. 190; *Ford v. Delta & P. L. Co.*, 164 U. S. 662; *Board of Imp. v. School Dist.*, 56 Ark. 354; *Emery v. Gas Co.*, 28 Cal. 346; *Taylor v. Palmer*, 31 Cal. 240; *San Diego v. Linda Vista Irrig. Dist.*, 108 Cal. 189; *Seymour v. Hartford*, 21 Conn. 481; *Bridgeport v. New York & N. H. R. Co.*, 36 Conn. 255; *Railroad Co. v. Wright*, 68 Ga. 311; *Atlanta v. First Presb. Church*, 86 Ga. 730; *Canal Trustees v. Chicago*, 12 Ill. 403; *Chicago v. Colby*, 20 Ill. 614; *Bank of Republic v. Hamilton*,

21 Ill. 53; *McBride v. Chicago*, 22 Ill. 574; *Peoria v. Kidder*, 26 Ill. 351; *Pleasant v. Kost*, 29 Ill. 490, 494; *Chicago v. Baptist Theological Union*, 115 Ill. 245; *Adams County v. Quincy*, 130 Ill. 566; *Bloomington Cemetery Assoc. v. People*, 139 Ill. 16; *Illinois Central R. Co. v. Mattoon*, 141 Ill. 32; *Illinois Central R. Co. v. Decatur*, 154 Ill. 173; *First Presb. Church v. Fort Wayne*, 36 Ind. 338; *Palmer v. Stumph*, 29 Ind. 329; *Trustees of Church v. Ellis*, 38 Ind. 3; *Farwell v. Manuf. Co.*, 97 Iowa 286; *Allen v. Davenport*, 107 Iowa 90; *Paine v. Spratley*, 5 Kan. 525; *Broadway Baptist Church v. McAtee*, 8 Bush 508; *Commonwealth v. Nashville, C. & St. L. R. Co.*, 93 Ky. 430; *Kilgus v. Trustees*, 94 Ky. 439; *Commonwealth v. Bridge Co.*, 95 Ky. 60; *Louisville v. McNaughten (Ky.)*, 44 S. W. Rep. 380; *Alexander v. Baltimore*, 5 Gill 383, 396; *Baltimore v. Greenmount Cemetery Co.*, 7 Md. 517; *Crowley v. Copeley*, 2 La. An. 329; *La Fayette v. Orphan Asylum*, 4 La. An. 1; *Rooney v. Brown*, 21 La. An. 51; *Seamen's Friend Soc. v. Boston*, 116 Mass. 181; *Worcester Agric. Soc. v. Worcester*, 116 Mass. 189; *Phillips Acad. v. Andover*, 175 Mass. 118, 128; *Le Fevre v. Detroit*, 2 Mich. 586; *Lake Shore & M.*

that no church or place of public worship "should be taxed by any law of this state." Upon this the court remarked: "The word *taxes* means burdens, charges or impositions put or set upon persons or property for public uses, and this is the

S. R. Co. v. Grand Rapids, 102 Mich. 374, 380; *State v. District Court*, 54 Minn. 34; *Washburn Memorial Orphan Asylum v. State*, 73 Minn. 343; *Lockwood v. St. Louis*, 20 Mo. 20; *St. Louis Public Schools v. St. Louis*, 26 Mo. 468; *Sheehan v. Good Samaritan Hospital*, 50 Mo. 155; *Clinton v. Henry County*, 115 Mo. 557; *Beatrice v. Brethren Church*, 41 Neb. 358; *Lincoln Street R. Co. v. Lincoln (Neb.)*, 84 N. W. Rep. 802; *Brewster v. Hough*, 10 N. H. 138; *Paterson v. Society, etc.*, 24 N. J. L. 385; *State v. Robertson*, 24 N. J. L. 504; *State v. Newark*, 27 N. J. L. 185; *State v. Mills*, 34 N. J. L. 177; *State v. Newark*, 35 N. J. L. 157; *State v. Newark*, 38 N. J. L. 478; *State v. Jersey City*, 42 N. J. L. 97; *Mayor, etc. of New York*, 11 Johns. 77; *Bleeker v. Ballou*, 3 Wend. 263; *Chegaray v. Jenkins*, 3 Sandf. 409; *People v. Roper*, 35 N. Y. 629; *Buffalo City Cemetery v. Buffalo*, 46 N. Y. 506; *Roosevelt Hospital v. New York*, 84 N. Y. 108; *Dyker, etc. Co. v. Cook*, 3 App. Div. (N. Y.) 164; *Fargo & S. W. R. Co. v. Brewer*, 3 N. D. 34; *Kendrick v. Farquar*, 8 Ohio 189, 197; *Armstrong v. Treasurer of Athens County*, 10 Ohio 235; *Cincinnati College v. State*, 19 Ohio 110; *Northern Liberties v. St. John's Church*, 13 Pa. St. 104; *Crawford v. Burrell*, 53 Pa. St. 219, 220; *Harvey v. South Chester*, 99 Pa. St. 565; *Philadelphia v. Contributors*, 143 Pa. St. 367; *In re Broad St.*, 165 Pa. St. 475; *Philadelphia v. Union Burial Ground Soc.*, 178 Pa. St. 533; *Second Universalist Soc. v. Providence*, 6 R. I. 235; *Matter of College St.*, 8 R. I. 474; *Winona & St. P. R. Co. v. Watertown*, 1 S. D. 46; *Roundtree v. Galveston*, 42 Tex. 612; *Allen v. Galveston*, 51 Tex. 302; *Taylor v. Boyd*, 63 Tex. 533; *Harris County v. Boyd*, 70 Tex. 237; *Orange & A. R. Co. v. Alexandria*, 17 Grat. 176; *Senor v. Board of Com'rs*, 13 Wash. 48; *Hale v. Kenosha*, 29 Wis. 599; *Chicago, St. P., M. & O. R. Co. v. Bayfield County*, 87 Wis. 188. Some of the exemptions in these cases seem very strong and comprehensive, but they were generally applied only to the customary taxes. The following instances may be given: A statute exempting a railroad company "from all taxation of every kind except as therein provided" does not exempt it from a special tax to defray the cost of grading and paving a street assessed on land forming part of the company's right of way as benefited by such improvement; *Illinois Central R. Co. v. Decatur*, 154 Ill. 173, 147 U. S. 190. In *Buffalo City Cemetery v. Buffalo*, 46 N. Y. 506, a cemetery exempt by law from "all public taxes, rates, and assessments," was held not exempt from a paving assessment. *Folger, J.*, says: "We think that the current of authorities in this and some of the sister states runs to this result: that public taxes, rates, and assessments are those which are levied and taken out of the property of the person assessed, for some public or general use or purpose, in which he has no direct, immediate, and peculiar interest; being exactions from him towards the expense of carrying on the government, either directly and, in general, that of the whole commonwealth, or more mediately and particularly through the intervention of municipal corporations; and that those charges and impositions which are laid directly upon the

definition which Lord Coke gives of the word *tallage* (2 Inst. 232); and Lord Holt (in *Carters*, 438) gives the same definition in substance of the word *tax*. The legislature intended by that exemption to relieve religious and literary institutions

property in a circumscribed locality to effect some work of local convenience, which in its result is of peculiar advantage and importance to the property especially assessed for the expense of it, are not public, but are local and private so far as this statute is concerned." Different holding as to a sewer assessment: *Oliver Cemetery Co. v. Philadelphia*, 93 Pa. St. 129. In *Baltimore v. Greenmount Cemetery Co.*, 7 Md. 517, an exemption from "any tax or public imposition whatever" was held to apply only to "taxes or impositions levied or imposed for the sake of revenue," and not to relieve the cemetery from "such charges as are inseparably incident to its location in regard to other property;" e. g., an assessment for paving the street in front. In *Paterson v. Society, etc.*, 24 N. J. L. 385, the exemption was from "taxes, charges, and impositions;" but it was held not to extend to an assessment for grading and paving a street. In *State v. Newark*, 27 N. J. L. 185, the exemption was from "charges and impositions," and the same ruling was had. In *Sheehan v. Good Samaritan Hotel*, 50 Mo. 155, exemption from "taxation of every kind" was held not to extend to an assessment for street improvements. Compare *Dunlieth, etc. Bridge Co. v. Dubuque*, 32 Iowa 427; *Brightman v. Kirner*, 22 Wis. 54. In *Bridgeport v. New York & N. H. R. Co.*, 36 Conn. 255, the railroad company paid a tax which, by its charter, was to be "in lieu of all other taxes;" but the company was, nevertheless, held liable to a street assessment. A like case was *Lake Shore & M. S. R. Co. v. Grand Rapids*, 102 Mich. 374. A special as-

essment against a homestead for a sidewalk is not a "tax" within the meaning of a constitutional provision subjecting homesteads to forced sales for taxes due thereon: *Higgins v. Bordages*, 88 Tex. 458. But see *Perine v. Forbush*, 97 Cal. 305. A statute remitting all penalties in excess of a certain per cent. on all state, county, school district, and municipality taxes levied for certain years, and which have not been sold at tax sale to persons other than the county or municipality for which the original tax was levied, does not include assessments levied for local improvements: *Seattle v. Whittlesey*, 17 Wash. 447. These cases show that the general inclination has been to confine the application of all such general language to the taxes imposed for ordinary revenue. But in Massachusetts it has been held that an assessment for altering a street is a civil imposition within the meaning of a college charter exempting the college property from "all civil impositions, taxes, and rates:" *Harvard Coll. v. Boston*, 104 Mass. 470. An exemption from "all public taxes and assessments" has been held in Minnesota to extend to assessments for local improvements: *Oakland Cemetery Assoc. v. St. Paul*, 36 Minn. 529. So, an exemption from "taxes or assessments" will exempt from local assessments: *State v. Newark*, 36 N. J. L. 478; *Hudson County Catholic Protectors v. Board*, 56 N. J. L. 385; *Codman v. Johnson*, 104 Mass. 491. In Pennsylvania a general exemption from county and city taxes is held to exempt from special assessments: *Olive Cemetery Co. v. Philadelphia*, 93 Pa. St. 129; *Erie v. First*

from these public burdens, and the same exemption was extended to the real estate of any minister not exceeding in value \$1,500. But to pay for the opening of a street in the ratio of the benefit or advantage derived from it is no burden. It is no talliage or tax within the meaning of the exemption, and has no claim upon the public benevolence. Why should not the real estate of a minister as well as of other persons pay for such an improvement in proportion as it is benefited? There is no inconvenience or hardship in it, and the maxim of law that *qui sentit commodum debet sentire onus*, is perfectly consistent with the interests of science and religion."¹ And yet these assessments are a legal exercise of the taxing power, and can only be justified on that ground.²

Railroad exemptions. Cases of the exemption of railroad property from taxation furnish many illustrations of the rule of strict construction, but they depend so much upon their special facts that little can be done here beyond making general reference.³ For the most part these exemptions are in

Univ. Church, 105 Pa. St. 278. And a statute exempting from taxation all churches, with the necessary grounds, exempts from a "frontage" tax for laying water-pipes in the street: Philadelphia v. Church of St. James, 134 Pa. St. 207. Under a Delaware statute providing that a certain railroad company should pay a stated sum yearly in lieu of all taxes that might become due under any and all laws of the state, it was held that the company was not liable for a local assessment: Philadelphia, W. & B. R. Co. v. Neary, 5 Del. Ch. 600.

¹ People v. Brooklyn, 4 N. Y. 419.

² Matter of Mayor, etc., 11 Johns. 86; Sharp v. Speir, 4 Hill 76; People v. Brooklyn, 4 N. Y. 419; Litchfield v. Vernon, 41 N. Y. 123; In re Van Antwerp, 56 N. Y. 261; Genet v. Brooklyn, 99 N. Y. 296; Dyker, etc. Co. v. Cook, 3 App. Div. (N. Y.) 164; Walsh v. Mathews, 29 Cal. 123; Chambers v. Satterlee, 40 Cal. 497; Hines v.

Leavenworth, 3 Kan. 186; Yeatman v. Crandall, 11 La. An. 220; Matter of Street Opening, 20 La. An. 497; Baltimore v. Greenmount Cemetery Co., 7 Md. 517; Motz v. Detroit, 18 Mich. 495; McComb v. Bell, 2 Minn. 256; Glasgow v. Rowse, 43 Mo. 479, 489; Paterson v. Society, etc., 24 N. J. L. 384; State v. Fuller, 34 N. J. L. 227; State v. Newark, 35 N. J. L. 168, 171; Reeves v. Treasurer, 8 Ohio St. 333; Pray v. Northern Liberties, 31 Pa. St. 69; Weeks v. Milwaukee, 10 Wis. 242. The case of People v. Brooklyn, *supra*, is somewhat questioned in Dalrymple v. Milwaukee, 53 Wis. 178, in which "tax certificates" in a limitation law were held to embrace a certificate on a sale for local assessments.

³ In Atlanta v. Georgia Pac. R. Co., 74 Ga. 16, it was held that both under statute and independently of it the property of a railroad company used in carrying on its usual and ordinary business is not subject

the nature of commutations, the railroad company paying some prescribed tax as a consideration for exemption from all other taxation.¹ But the rule of strict construction is nevertheless applicable, though perhaps with less force than when

to taxation. What constitutes the "beginning of the construction" of a railroad, so that a period of exemption may start to run, see *Commonwealth v. Louisville, St. L. & K. R. Co.* (Ky.), 31 S. W. Rep. 464; *Hoodgensville & E. R. Co. v. Commonwealth* (Ky.), 34 S. W. Rep. 1075; *Ohio Valley R. Co. v. Commonwealth*, 49 S. W. Rep. 548. Where a charter provides that the company "shall be exempt from taxation for a term of twenty years from the completion of said road to the Mississippi river, but not to extend beyond twenty-five years from the date of the approval of this act," the exemption does not begin to run until the road's completion to the river: *Yazoo & M. V. R. Co. v. Thomas*, 65 Miss. 553, 132 U. S. 174; *Same v. Board*, 37 Fed. Rep. 24. The acquirement of a road to the river by consolidation with another company does not confer exemption, a physical construction being required: *Yazoo & M. V. R. Co. v. Adams*, 76 Miss. 545. Exemption of road fixtures, etc., held not to begin to run until after the completion of the road within the limits of the state: *Vicksburg, S. etc. R. Co. v. Dennis*, 116 U. S. 665. When period of exemption began where lands were granted in aid of a railroad, patents for a certain amount of the lands to be issued on completion of each twenty miles of road: *State v. Harshaw*, 76 Wis. 230. Property of a branch railroad constructed after the adoption of a constitution prohibiting the exemption of railroad property was held not to be exempt although the company's charter authorized it to construct branches, and exempted its property from tax-

ation: *State v. Chicago, B. & K. C. R. Co.*, 89 Mo. 523; *Chicago, B. & K. C. R. Co. v. Missouri*, 120 U. S. 569, 122 U. S. 561. A branch road to procure gravel held liable to ordinary taxation: *State v. Hancock*, 33 N. J. L. 315. Compare *State v. Hancock*, 35 N. J. L. 537; *Atlantic, etc. Co. v. Allen*, 15 Fla. 637. Construction of exemption of transportation companies from local taxation: *Railroad Co. v. Berks County*, 6 Pa. St. 70; *Erie County v. Transportation Co.*, 87 Pa. St. 434; *Northampton County v. Lehigh, etc. Co.*, 75 Pa. St. 461; *Wayne County v. Delaware & H. Canal Co.*, 3 Harr. 351.

¹ A specific state tax on a railroad company held to preclude taxation of its property by valuation: *Camden & A. R. Co. v. Commissioners*, 18 N. J. L. 11. And see *State v. Cook*, 32 N. J. L. 338; *Cook v. State*, 33 N. J. L. 474; *Douglass v. State*, 34 N. J. L. 485. Under a statute taxing railroads specifically at the rate of \$20,000 per mile, each railroad is regarded as an entirety, and not subject to fragmentary taxation; hence they are not impliedly subject to local taxation by statute authorizing a county to levy and collect *ad valorem* taxes on all property in the county liable to taxation for state revenue purposes: *Commonwealth v. Louisville & N. R. Co.* (Ky.), 9 S. W. Rep. 805; see *New Albany v. Kansas City, M. & B. R. Co.*, 76 Miss. 111. An exemption in a railroad charter from any tax which will reduce the dividends below a certain percentage is not void for uncertainty, although no limit of capital stock is fixed, and no means provided for fixing the same or ascertaining the dividends:

the exemption is total.¹ A general exemption of railroad property from taxation has been said to be co-extensive with the company's right to take property for its use by condemnation,

Mobile & O. R. Co. v. State, 153 U. S. 486. Where a railroad company's charter provided that as soon as the net proceeds of the railroad should amount to seven per cent. upon its cost it should pay to the state a tax of a certain per cent., "provided, that no other tax or impost shall be levied or assessed upon the said company," it was held that the exemption under the word "provided" was a positive enactment, exempting the company from all other tax: *State v. Minton*, 23 N. J. L. 529. A statute reciting that certain railroad corporations then owning and occupying railroads in the state claimed exemption from all taxation beyond what was provided for by their charters or by special laws, and providing that any such corporation might surrender all claims of exemption from taxation, and accept the provisions of that act in lieu thereof, did not apply to a company having a repealable charter: *State Board v. Paterson & R. R. Co.*, 50 N. J. L. 446.

¹ A statute providing that a certain railroad company shall pay to the state a certain tax and "no more" does not preclude an additional county tax, the exemption being only in relation to an additional state tax: *Kentucky Central R. Co. v. Bourbon County*, 82 Ky. 497; *Kentucky Central R. Co. v. Pendleton County (Ky.)*, 2 S. W. Rep. 176. That a street railroad is not taxable by the city on account of the city's contract to accept a percentage of the company's earnings in lieu of all other taxes for city purposes does not obviate the necessity of the city's assessing it for state and county taxes: *Detroit Citizens' St. R. Co. v. Common Coun-*

cil, 125 Mich. 673. Payment by a railroad company to the state of a specific tax under a law which provided that it should not "be assessed with any tax on its lands, buildings, or equipments," was held not to preclude municipal taxation: *Orange & A. R. Co. v. Alexandria*, 17 Grat. 176. Compare this with *Richmond v. Richmond & D. R. Co.*, 21 Grat. 604, where an exemption from "any charge or tax whatsoever" was held to cover municipal as well as state charges. See, also, *Southern R. Co. v. Jackson*, 38 Miss. 334; *Neustadt v. Illinois Central R. Co.*, 31 Ill. 484; *Gardner v. State*, 21 N. J. L. 557; *Neary v. Philadelphia, W. & B. R. Co.*, 7 *Houst. (Del.)* 419. A road-tax uniform over the whole county, and charged upon all the property subject to pay a county tax, is a county tax within the meaning of a charter exempting a railroad company from the payment of county taxes: *State v. Hannibal & St. J. R. Co.*, 101 Mo. 120. So is a tax levied on all the taxable property in the county to pay county bonds given for stock in a railroad company; and this, though the bonds can only be paid out of the tax levied for that special purpose: *Same v. Same*, 101 Mo. 149. But a local tax levied only on property within the limits of a particular township to pay township funding bonds is not "a county tax" within such a charter: *Ibid.*; *State v. Hannibal & St. J. R. Co.*, 113 Mo. 297. Giving to a municipality the power to tax railroads does not of itself authorize it to tax a railroad running through it, which, by its charter, is exempt: *Elizabethtown, etc. R. Co. v. Trustees*, 12 *Bush* 233. Under a charter giving a city the

and the limit of such right is the limit of the exemption.¹ Such a general exemption has been held to include the franchise,² but an exemption of the road-bed, etc., does not preclude the

right to tax all property within its limits "which is by law taxable for territorial and county purposes," such city cannot impose taxes on the property of a railroad company which is exempt by general law from taxation for territorial and county purposes: *Columbia & P. S. R. Co. v. Chilberg*, 6 Wash. 612. A statute withdrawing an exemption from taxation may or may not empower municipalities to levy local taxes on the property previously exempt: Compare *Bailey v. Magwire*, 22 Wall. 215, with *Savannah v. Jesup*, 106 U. S. 563. The act incorporating a certain railroad company provides as follows: "The . . . stock, property, and assets belonging to said company shall be listed by the president, secretary, or other officer, with the auditor of the state, and an annual tax for state purposes shall be assessed by the auditor upon all the property and assets of every name, kind, and description belonging to said corporation. Whenever the taxes levied for state purposes shall exceed three-fourths of one per cent. per annum, such excess shall be deducted from the gross proceeds or income herein required to be paid by said corporation to the state, and the said corporation is hereby exempted from all taxation of every kind except as herein provided for." Held, that this exemption did not apply to a wharf-boat and to a steamboat used principally in conveying the passengers and freight from the terminus of the road to the terminus of another rail-

road, thus making connections: *Illinois Central R. Co. v. Irvin*, 72 Ill. 452.

¹ *State v. Hancock*, 33 N. J. L. 315; *Milwaukee, etc. R. Co. v. Milwaukee*, 34 Wis. 271; *State v. Western, etc. R. Co.*, 54 Ga. 428, 66 Ga. 563; *State v. Baltimore, etc. Co.*, 48 Md. 49. A provision in a railroad charter was that "all machines, wagons, vehicles, or carriages belonging to the company, with all its works and all the property which may accrue from the same, shall be vested in the respective shareholders forever, in proportion to their respective shares, and shall be deemed personal estate, and exempt from any charge or tax whatever." This makes all the property of the company, owned and used for its purposes, personal estate and exempt. A city in which the company owns property cannot dispute this exemption on the ground of its lessening its power to pay its debts: *Richmond v. Richmond & D. R. Co.*, 21 Grat. 604. A provision in a railroad company's charter that the railroad and its appurtenances shall not be taxed higher than the fixed rate, followed by provisions regulating the taxation of the property of the company by municipal corporations, amounts to a limitation on such taxation: *Central R. & B. Co. v. Wright*, 164 U. S. 327. Lands granted to a territory in aid of railroads, and subsequently conveyed to railroad companies on payment of a gross earnings tax, were held not subject to specific taxation: *State v. Sioux City & St. P. R. Co.*

² *Wilmington R. Co. v. Reid*, 13 Wall. 264; *Raleigh, etc. R. Co. v. Reid*, 13 Wall. 269; *State v. Berry*, 17 N. J. L. 80; *Camden & A. R. Co. v.*

Hillegas, 18 N. J. L. 11; *Camden & A. R. Co. v. Commissioners*, 18 N. J. L. 71. See *Nichols v. New Haven, etc. Co.*, 42 Conn. 103.

taxation of the franchise.¹ If a railroad company is exempt from taxation on its franchises and capital stock, it is exempt from taxation on gross receipts.² A statutory exemption of the right of way granted to a railroad operates to exempt the land itself — so far as it is made by the act subject to such right of way — and all structures erected thereon, but not the right of way acquired from private persons and not granted by the act.³ And where riparian property is exempt as railroad property, riparian rights incident thereto — for example, submerged land — are also exempt.⁴

The effect of the consolidation of railroads upon exemptions or privileges in respect to taxation previously existing in one

82 Minn. 158. That a railroad company transferred its franchise, but retained part of the land grant, was held not to operate as a sale of the land so as to subject it to specific taxation: *Ibid.* As to when lands are "sold and conveyed" so as to terminate exemption, see *State v. Webber*, 38 Minn. 397. Lands of a certain company were held exempt where it had given a contract for their sale, but where the contract had been declared forfeited for non-performance: *Illinois Central R. Co. v. Goodwin*, 94 Ill. 262. But the exemption ceases when the contract has been performed, though no deed was given: *Champaign County v. Reed*, 100 Ill. 304. Exemption of lands where company's charter had been declared forfeited: *Minnesota Central R. Co. v. Donaldson*, 38 Minn. 115. Logs cut for sale by a railroad company upon its lands exempt from taxation are taxable: *State v. Northern Pac. R. Co.*, 39 Minn. 25. Under an amended charter exempting a canal from taxation, all of a company's property which is a constituent part of the canal, incident thereto, and serving the purpose of the company by maintaining its navigation, is exempt: *Carondelet Canal*

Nav. Co. v. New Orleans, 44 La. An. 394.

¹ *Atlantic, etc. R. Co. v. Commissioners*, 87 N. C. 129.

² *State v. Baltimore, etc. R. Co.*, 48 Md. 49.

³ *New Mexico v. United States Trust Co.*, 172 U. S. 171. A charter exemption of the right of way through the public domain includes the road-bed, station buildings, workshops, etc., constructed on the right of way: *Northern Pac. R. Co. v. Carland*, 5 Mont. 146. But see *Atlantic & P. R. Co. v. Lesueur (Ariz.)*, 19 Pac. Rep. 157; *Atlantic & P. R. Co. v. Yavapai County (Ariz.)*, 21 Pac. Rep. 768. Construction of a railroad exemption of right of way, etc.: *Richmond, etc. R. Co. v. Commissioners*, 84 N. C. 504. Where a city granted a right of way to a railroad company "free of any claim for damages or other compensation," it did not part with its right to impose a license tax on this, as on other railroad companies: *Los Angeles v. Southern Pac. R. Co.*, 67 Cal. 433. As to whether a change in name, etc., of company deprives it of the exemption, see *Cheraw, etc. R. Co. v. Commissioners*, 88 M. C. 519.

⁴ *State v. St. Paul & D. R. Co.*, 81 Minn. 422.

of the roads has been considered and passed upon in many cases which are so different in their facts as to render useless anything more than a citation in this place.¹

Corporate stock and property. An exemption of the corporate stock of a corporation is held in certain jurisdictions to be an exemption of the shares.² Certain other jurisdictions, includ-

¹ See *Tomlinson v. Branch*, 15 Wall. 460; *Charleston v. Branch*, 15 Wall. 470; *Delaware R. Tax Case*, 18 Wall. 206; *Bailey v. Railroad Co.*, 22 Wall. 604; *Branch v. Charleston*, 92 U. S. 677; *Central R. Co. v. Georgia*, 92 U. S. 665; *Chesapeake, etc. Co. v. Virginia*, 94 U. S. 718; *Railroad Co. v. Maine*, 96 U. S. 499; *Railroad Co. v. Gaines*, 97 U. S. 711; *Railroad Co. v. Georgia*, 98 U. S. 359; *Louisville, etc. R. Co. v. Palmes*, 109 U. S. 244; *St. Louis, etc. R. Co. v. Berry*, 113 U. S. 465; *Tennessee v. Whitworth*, 117 U. S. 139; *Keokuk, etc. R. Co. v. Missouri*, 152 U. S. 301; *Pearsall v. Great Northern R. Co.*, 161 U. S. 646; *Yazoo & M. V. R. Co. v. Adams*, 180 U. S. 1; *Atlantic, etc. R. Co. v. Allen*, 15 Fla. 637; *Atlanta, etc. R. Co. v. State*, 63 Ga. 483; *Wright v. Southwestern R. Co.*, 64 Ga. 783; *Quincy Bridge Co. v. Adams County*, 88 Ill. 615; *Louisville, etc. R. Co. v. Commonwealth*, 10 Bush 43; *State v. Northern Central R. Co.*, 44 Md. 131; *State v. Railroad Co.*, 45 Md. 361; *State Treasurer v. Auditor-General*, 46 Mich. 224; *Chicago, etc. R. Co. v. Auditor-General*, 53 Mich. 79; *Louisville, N. O. & T. R. Co. v. Taylor*, 68 Miss. 361; *Adams v. Yazoo & M. V. R. Co.*, 77 Miss. 194; *Yazoo & M. V. R. Co. v. Adams (Miss.)*, 28 South. Rep. 956; *Wilmington & W. R. Co. v. Alsbrook*, 110 N. C. 137.

² *Bank of Georgia v. Savannah*, Dudley 130; *Johnson v. Commonwealth*, 7 Dana 338; *Bank of Cape Fear v. Edwards*, 5 Ired. 516; *Richardson v. St. Albans (Vt.)*, 47 Atl. Rep. 100. In the last named case the

court says: "It is clear that an exemption of the working capital of a corporation would not afford the relief intended if all its stock were taxed to the individual stockholders. The capital of the corporation and the shares of its stock are different forms of the same thing. There is no value to the stock independent of the property which it represents. The property of the corporation is the property of the stockholders who compose it, and the shares held by each represent his interest in the corporate assets." In the very recent case of *Penrose v. Chaffraix*, 106 La. (30 South. Rep. 718), the following language is used by *Blanchard, J.*: "Where there is no clause exempting from taxation, it may be the power resides in the legislature to levy a tax on both the capital of a corporation and the shares of stock representing that capital. But, where there is an exempting clause, the question becomes one of legislative intent as to the scope and extent of the exemption, rather than one of legislative power. Whether the exemption of the capital or the capital stock from taxation includes immunity of the shareholders from the imposition of such burden on the shares of stock held by them individually is to be determined on a consideration of the nature or character of the exemptive clause and the relations established between the taxing power and the corporation at the time the charter was granted and maintained since." And in that case it was held that when the

ing the supreme court of the United States, hold that the exemption of the capital or capital stock of a corporation from taxation does not necessarily exempt the shares in the hands of the individual stockholders.¹ While, in the absence of any

Louisiana legislature in 1836 exempted the capital of the Citizens' Bank of Louisiana from taxation, it meant to include in the exemption that which represented the capital — the shares in the hands of those who had subscribed to the capital stock. In New Jersey it is held that the exemption of a corporation from taxation exempts its shares of stock: *State v. Branin*, 23 N. J. L. 484; *State v. Bentley*, 23 N. J. L. 532; *State v. Powers*, 24 N. J. L. 400. And conversely, it is also held in that state that an express exemption of the stock owned by the stockholders exempts from taxation the company's property and capital stock: *Singer Manuf. Co. v. Heppenheimer*, 58 N. J. L. 633; *Hancock v. Singer Manuf. Co.*, 62 N. J. L. 289. As to the exemption of shares of stock owned by citizens of New Jersey in a foreign railroad company, the property of which, situated outside of the state, has been assessed, see *State v. Ramsey*, 54 N. J. L. 546. An act of the legislature of Quebec providing for a direct tax upon the capital of a bank was held to be a tax upon the shares of stock held by its stockholders within the meaning of the Vermont statute exempting from taxation shares of stock in a corporation situated in another state, where all its stock is taxed in such state to the stockholders: *Foster v. Stevens*, 63 Vt. 175. The same statute of Vermont also applies to national banks: *Smalley v. Burlington*, 63 Vt. 443. Where all the business of a foreign corporation is situated in Ohio, and all of its property situated and held there, shares of its capital held there are exempt in that state from taxa-

tion: *Hubbard v. Brush*, 61 Ohio St. 252. Under the Texas statute exempting corporate stock from taxation against the owner when the capital and property of the corporation are required to be taxed, the owner of such stock in a state bank is not taxable, while the property of the bank is, under the law, taxable, although the bank does not return its property for taxation: *Gillespie v. Gaston*, 67 Tex. 599. An exemption of the stock of the stockholders in corporations taxable on their shares has no application to stockholders in foreign corporations taxable only on their property within the state: *Sturges v. Carter*, 114 U. S. 511. See *Worth v. Ashburton*, 90 N. C. 409. A statute exempting from taxation the personalty of every incorporated company not made liable to taxation on its "capital" applies only to corporations having a capital stock, and hence a church or a college, or a savings bank having no capital stock is not within the statute: *Catlin v. Trustees*, 113 N. Y. 133; *People v. Coleman*, 135 N. Y. 231.

¹ *Bank of Commerce v. Tennessee*, 161 U. S. 134, 163 U. S. 416; *Shelby County v. Union & P. Bank*, 161 U. S. 149; *New Orleans v. Citizens' Bank*, 167 U. S. 371; *Memphis v. Ensley*, 6 Baxt. 553; *Bank of Tennessee v. State*, 9 Yerg. 490; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406; *Memphis v. Union & P. Bank*, 91 Tenn. 546; *Memphis v. Home Ins. Co.*, 91 Tenn. 558; *Memphis v. Memphis City Bank*, 91 Tenn. 574; *State v. Hernando Ins. Co.*, 97 Tenn. 85; *Union & P. Bank v. Memphis*, 101 Tenn. 554; *State Bank v. Richmond*, 79 Va. 113. A provision in a bank's charter that the bank

words showing a different intent, an exemption of the stock or capital stock of a corporation may imply and carry with it an exemption of the property in which such stock is invested,¹ yet if the legislature uses language at variance with such intention, the courts, never presuming a purpose to exempt any property from its just share of the public burdens, will construe any doubts which may arise as to the proper interpretation of the charter against the exemption."² An exemption of the

should pay to the state an annual tax of one-half of one per cent. on each share of capital stock, which should be in lieu of all other taxes, was held to lay a tax on the shares not on the capital stock (following *Farrington v. Tennessee*, 95 U. S. 632), and not to exempt the bank from taxation on its capital stock: *Shelby County v. Union & P. Bank*, 161 U. S. 149.

¹ *New Haven v. City Bank*, 31 Conn. 106; *Baltimore v. Baltimore & O. R. Co.*, 6 Gill 288; *Hannibal R. Co. v. Shacklett*, 30 Mo. 550; *Scotland County v. Missouri R. Co.*, 65 Mo. 123. See *County Com'rs v. Annapolis, etc. Co.*, 47 Md. 592; *Frederick County v. National Bank*, 48 Md. 117; *State v. Wilson*, 52 Md. 638; *State v. Butler*, 86 Tenn. 614. The exemption of a railroad company's stock from taxation includes all the property necessary and proper for the purpose of laying, building, and sustaining the road: *Bibb County Ordinary v. Central R. Co.*, 40 Ga. 646. In *State v. Tunis*, 23 N. J. L. 546, a statute exempting from taxation "so much of the property of incorporated companies, represented by the stock thereof, as by virtue of this act is taxed in the hands of the stockholders," was construed. The court said: "It is perfectly clear that the capital stock in the hands of the stockholders represents the entire property of every incorporated company. All the property of the company goes to constitute the value of the stock, and upon the dissolution of the corporation it all

goes to the stockholders in proportion to their respective shares." In *Railroad Co. v. Gaines*, 97 U. S. 697, it was said that "in general, an exemption of capital stock, without more, may with great propriety be considered, under ordinary circumstances, as exempting that which, in the legitimate operations of the corporation, comes to represent the capital." Where the property of a corporation and the shares therein are exempt, it cannot be taxed at all: *Worth v. Wilmington, etc. R. Co.*, 89 N. C. 291; see *Worth v. Petersburg, etc. R. Co.*, 89 N. C. 301. An exemption of a corporation's stock and property was held to preclude a privilege tax: *Grand Gulf R. Co. v. Buck*, 53 Miss. 246, citing *Railroad Co. v. Reid*, 13 Wall. 264; *Mobile, etc. R. Co. v. Moseley*, 52 Miss. 127. And if the capital and franchise of a bank are not taxable the assessment of a privilege tax is void: *State v. Bank of Commerce*, 95 Tenn. 221. Where a bank's capital was exempt from taxation it was held that a reference, in a statute imposing a license tax to the capital and surplus of banks, was simply for the purpose of classifying the banks and of graduating the license under such classification, and imposed no tax on the capital: *State v. Citizens' Bank*, 52 La. An. 1086.

² *Central R. & B. Co. v. Wright*, 164 U. S. 327, where it is also said that "while the word 'stock' has sometimes been held to include the property of the corporation represented by its stock, this is true only when

stock of a corporation is an exemption also of its gross income, the latter being but an accessory to the former;¹ but an exemption of the shares in a bank from general taxation upon the payment of an annual tax of a certain per cent. does not exempt the surplus and undivided profits.² And the capital stock of a corporation is not exempt because of a charter provision that its real and personal property shall be taxed in the same way as that of individual citizens.³ Where a statute forever exempts from taxation shares in the capital stock of a railroad company, such shares continue exempt in the hands of their various holders.⁴ But exemption is not a franchise, and, therefore, does not pass as such to a purchaser of the corporate property.⁵ The exemption from taxation must be construed to

the context does not require a different construction." It was held in the same case that a provision in the charter of a railroad company denying to municipal corporations the power to tax its "stock," but empowering them to tax "any property, real or personal," of the company, is, in effect, a denial of power to tax the shares of stock in the hands of stockholders. "When the property has been exempted by reason of the exemption of the capital stock, it has been because, taking the whole charter together, it was apparent that the legislature so intended:" *Railroad Cos. v. Gaines*, 96 U. S. 697. In the latter case the capital stock of a railroad company was by its charter exempted forever from taxation, and its road, fixtures, appurtenances, etc., were exempted for only twenty years; and it was held that the property might be taxed after the time limited had expired, because it could not have been understood that the property was to represent the capital for the purposes of taxation. See *Railroad Co. v. Loftin*, 98 U. S. 559, 105 U. S. 258; *Vicksburg, S. etc. R. Co. v. Dennis*, 116 U. S. 665.

¹ *State v. Hood*, 15 Rich. Law 177. See *State v. Baltimore, etc. R. Co.*, 48 Md. 49.

² *Bank of Commerce v. Tennessee*,

161 U. S. 134; *Shelby County v. Union & P. Bank*, 161 U. S. 149.

³ *State v. Simmons*, 70 Miss. 485. But to avoid double taxation assessments of other property should be deducted in determining the value of the stock: *Ibid.* As to what constitutes the "capital" of a bank under a charter exempting its capital from taxation, see *New Orleans v. Citizens' Bank*, 167 U. S. 371; *State v. Board of Assessors*, 48 La. An. 35. In New Hampshire it is held that only that part of the surplus capital of a bank is subject to taxation which is not invested in tax-paying property or property exempt from taxation: *Mechanics' Nat. Bank v. Concord*, 68 N. H. 607. Bank's real estate held liable in Kentucky for county and municipal purposes: *Louisville Trust Co. v. Louisville (Ky.)*, 30 S. W. Rep. 991. In that state banks are subject to county, municipal, and school taxation: *Deposit Bank v. Daviess County*, 102 Ky. 174; *Fremd v. Deposit Bank (Ky.)*, 42 S. W. Rep. 102.

⁴ *Tennessee v. Whitworth*, 117 U. S. 129, 139.

⁵ *Morgan v. Louisiana*, 93 U. S. 217; *Railroad Co. v. Gaines*, 97 U. S. 697; *Railroad Co. v. Hamblen County*, 102 U. S. 273; *Railroad Co. v. Commissioners*, 103 U. S. 1; *Wilson v. Gaines*

have been the personal privilege of the very corporation specifically referred to, and to have perished with that, unless the express and clear intention of the law requires the exemption to pass as a continuing franchise to a successor. This statutory

103 U. S. 417; *Louisville, etc. R. Co. v. Palmes*, 109 U. S. 244; *Memphis R. Co. v. Commissioners*, 112 U. S. 609; *Railway Co. v. Miller*, 114 U. S. 176; *Picard v. Railroad Co.*, 130 U. S. 637; *Keokuk, etc. R. Co. v. Missouri*, 152 U. S. 301; *Alexandria, etc. Co. v. District of Columbia*, 1 MacA. 217; *Bloxham v. Florida C. & P. R. Co.*, 35 Fla. 625; *Baltimore, C. & A. R. Co. v. Ocean City*, 89 Md. 89; *Detroit City St. R. Co. v. Guthard*, 51 Mich. 180; *State v. Chicago, B. & K. C. R. Co.*, 89 Mo. 523; *State v. Butler*, 15 Lea 104. Compare *Gonzales v. Sullivan*, 16 Fla. 791; *Atlantic, etc. Co. v. Allen*, 15 Fla. 637. Where a railroad company had not power by its charter to sell its franchises, its exemption from taxation did not pass on a sale of the road to a foreign corporation under a statute providing that any railroad company of another state might lease or purchase any road in the state, with all its privileges, rights, and franchises, but that if it should lease a road in the state, "or make arrangements for operating the same as provided in this act," such part of said road as was within the state should be subject to taxation: *State v. Chicago, B. & K. C. R. Co. v. Missouri*, 89 Mo. 523; *Chicago, B. & K. C. R. Co. v. Missouri*, 122 U. S. 561. A subrogation by statute of one corporation to the rights and privileges of a former corporation does not include an immunity from taxation: *Phoenix F. & M. Ins. Co. v. Tennessee*, 161 U. S. 174; *Gulf & S. T. R. Co. v. Hewes (U. S.)*, 22 Sup. Rep. 26; see *Baltimore, C. & A. R. Co. v. Ocean City*, 89 Md. 89. An exemption granted to a railroad company under a special charter does not

apply to lines organized under the general railroad law and subsequently leased and operated by said company: *Lake Shore & M. S. R. Co. v. Grand Rapids*, 102 Mich. 374. As to taxation of a railroad company which has succeeded to the rights of a canal company, see *Nichols v. New Haven, etc. Co.*, 42 Conn. 103. Where a statute exempts from taxation for five years the property of a railroad company, "its successors and assigns," it is exempt in the hands of a foreclosure purchaser: *International & G. N. R. Co. v. Smith County*, 65 Tex. 21. The immunity from taxation under a contract whereby a street-car company is to pay a percentage of its earnings in lieu of other taxes for city purposes is assignable: *Detroit Citizens' St. R. Co. v. Common Council*, 125 Mich. 673. An exemption of a railroad's property from ordinary taxation on payment of a percentage on gross earnings has been held not to be personal, but to attach to the property: *First Div. etc. R. Co. v. Parcher*, 14 Minn. 297; *State v. St. Paul, etc. R. Co.*, 30 Minn. 311; *State v. Northern Pac. R. Co.*, 32 Minn. 294; *Stevens County v. St. Paul, M. & M. R. Co.*, 36 Minn. 467. The exemption of a railroad company's land-grant was held to be appurtenant to the line of road and the lands, and transferable to any company acquiring the road; and the transfer to such a company was not a sale of the land. A lease and contract between two railroad companies was held not to be such a sale: *Traverse County v. St. Paul, M. & M. R. Co.*, 73 Minn. 417. The right to hold exempt from taxation lands granted

rule of interpretation is founded upon an obvious public policy, which regards such exemptions as in derogation of the sovereign authority and of common right, not to be extended beyond the exact and express requirement of the grants, construed *strictissimi juris*.¹

A general or qualified exemption of the capital stock of a corporation is generally held not to extend to corporate property which is not held or used for the necessary purposes of the corporation.² Yet the question in every case is one of legis-

to a railroad corporation in aid of its principal enterprise is a franchise, but ancillary and subordinate; and the right to exercise such franchise, and to continue corporate existence for such purposes only, cannot, without express or clearly implied legislative permission, survive after a sale of the railroad, and the abandonment of the company's principal business as a railroad corporation: *State v. Minnesota Central R. Co.*, 36 Minn. 246. By virtue of a lease of an exempt railroad company and of a validating statute, an immunity from taxation was held to have passed to the lessee: *State Assessors v. Morris & E. R. Co.*, 48 N. J. L. 193.

¹ *Memphis R. Co. v. Commissioners*, 112 U. S. 609. In this case a railroad exempt from taxation had attempted to transfer its franchises to another corporation, which therefore claimed the exemption and filed its bill to restrain taxation. The bill was dismissed. And see *Lake Shore & M. S. R. Co. v. Grand Rapids*, 102 Mich. 374.

² *Bank v. Tennessee*, 104 U. S. 493; *Ford v. Delta, etc. Co.*, 43 Fed. Rep. 181, 164 U. S. 662; *Philadelphia, W. & B. R. Co. v. Neary*, 5 Del. Ch. 600; *Auditor-General v. Flint & P. M. R. Co.*, 120 Mich. 682; *Ramsey County v. Chicago, M. etc. R. Co.*, 33 Minn. 537; *State v. District Court*, 68 Minn. 242; *McCulloch v. Stone*, 64 Miss. 378; *Nashua & L. R. Co. v. Nashua*, 62 N. H.

602. The property of railroad companies, consisting of freight stations, offices and depots, round-houses, machine shops, passenger stations, and grounds covered by tracks and used as means of approach to the stations and buildings in connection with the railroads, and all public works of the company used as such, with their necessary appurtenances, that is such property as is ordinarily and properly pertinent to railroads, and strictly necessary for their proper operation in exercising their several franchises, is not liable to taxation as real estate under the general laws of the state: *Northumberland County v. Philadelphia & E. R. Co. (Pa.)*, 9 Atl. Rep. 504. See *Lehigh County v. Northampton*, 8 W. & S. 334; *Wayne County v. Delaware & H. Canal Co.*, 15 Pa. St. 351, 357, where the subject is considered at length; *Railroad Co. v. Berks County*, 6 Pa. St. 70; *New York & E. R. Co. v. Sabin*, 26 Pa. St. 242; *West Chester Gas Co. v. Chester County*, 30 Pa. St. 232; *Lackawanna Iron Co. v. Luzerne County*, 42 Pa. St. 424; *Pennsylvania & N. Y. C. & R. Co. v. Vandyke*, 137 Pa. St. 249; *Western New York & P. R. Co. v. Venango County*, 183 Pa. St. 618; *State v. Western R. Co.*, 66 Ga. 563; *Railroad Co. v. Wright*, 68 Ga. 311; *Boston & Me. R. Co. v. Cambridge*, 8 Cush. 237; *Auditor-General v. Flint & P. M. R. Co.*, 114 Mich. 682; *State v. N. W. Tel. Exch. Co. (Minn.)*, 87 N. W. Rep. 1131; *Hannibal & St. J. R.*

lative intent, and the cases cited in the margin will abundantly

Co. v. Shacklett, 30 Mo. 550; State v. Hannibal & St. J. R. Co., 37 Mo. 265; Vicksburg & M. R. Co. v. Bradley, 66 Miss. 518; Lewis v. Vicksburg & M. R. Co., 67 Miss. 518; Vicksburg & M. R. Co. v. Lewis, 68 Miss. 29; Le Blanc v. Illinois Central R. Co., 72 Miss. 669; Souhegan Nail, etc. Factory v. McConihe, 7 N. H. 309; Gardner v. State, 21 N. J. L. 557; State v. Mansfield, 23 N. J. L. 510; State v. Flavell, 24 N. J. L. 270; State v. Blundell, 24 N. J. L. 402; State v. Betts, 24 N. J. L. 555; State v. Newark, 25 N. J. L. 315; State v. Collector, 26 N. J. L. 519; State Treasurer v. Somerville & E. R. Co., 28 N. J. L. 21; State v. Elizabeth, 28 N. J. L. 103; State v. Leester, 29 N. J. L. 541; State v. Hancock, 33 N. J. L. 315; State v. Jersey City, 49 N. J. L. 540; United N. J. R. & C. Co. v. Jersey City, 57 N. J. L. 567; Delaware, L. & W. R. Co. v. Newark, 60 N. J. L. 60; Orange, etc. R. Co. v. Alexandria, 17 Grat. 176, which does not allow the implied exemptions; Vermont Central R. Co. v. Burlington, 28 Vt. 193; Milwaukee, etc. R. Co. v. Crawford Supervisors, 29 Wis. 116; Milwaukee, etc. R. Co. v. Milwaukee, 34 Wis. 271; Chicago, St. P., M. & O. R. Co. v. Bayfield, 87 Wis. 188; Milwaukee Electric R. etc. Co. v. Milwaukee, 95 Wis. 42; Wilmington R. Co. v. Reid, 13 Wall. 264, 268, per *Davis*, J. Lands held by a company in view of their probable future use are not exempt: Auditor-General v. Flint & P. M. R. Co., 120 Mich. 682; Ramsey County v. Chicago, M. etc. R. Co., 33 Minn. 537; St. Paul, M. & M. R. Co. v. St. Paul, 39 Minn. 112; Duluth, S. S. & A. R. Co. v. Douglas County, 103 Wis. 75. So of lands acquired for resale, or for the timber thereon: McCulloch v. Stone, 64 Miss. 378; Todd County v. St. Paul, M. & M. R. Co., 38 Minn. 163. The test of actual use was held inapplicable where the company was

engaged in the work of construction; property was exempt which would be necessary for the use of the company when its contemplated improvements were completed: State v. Haight, 35 N. J. L. 40. Grain elevators, built and operated by railroad companies, held exempt: Detroit Union R. Depot v. Detroit, 88 Mich. 347; State v. Jersey City, 49 N. J. L. 540; State v. Nashville, C. etc. R. Co., 86 Tenn. 438; Chicago, St. P., M. & O. R. Co. v. Bayfield, 87 Wis. 188; see *Hertert v. Chicago, M. & St. P. R. Co.* (Iowa), 86 N. W. Rep. 266. Otherwise, when erected by a railroad company and leased, the tolls collected being the results of investment, and not *sui generis* with those things necessary for the use and operation of the road: Illinois Central R. Co. v. People, 118 Ill. 137; *In re Swigert*, 119 Ill. 83. An exemption from taxation of "property necessarily used in operating the railroad" was held to apply to an inn used exclusively by persons arriving and departing on the railroad: Milwaukee, etc. R. Co. v. Supervisors, 29 Wis. 116; see *Chicago, etc. R. Co. v. Supervisors*, 48 Wis. 666; State v. Baltimore, etc. R. Co., 48 Md. 49. An hotel, owned by a railroad corporation and kept by its lessee as an hotel and summer resort, is not included within the exemption from ordinary taxation enjoyed by the corporation in respect to such of its property as is held and used for railroad purposes: State v. St. Paul, M. & M. R. Co., 42 Minn. 238. Gravel pits, owned by a railroad company but not used in the operation of its road, were held taxable by the local authorities: Le Blanc v. Illinois Central R. Co., 72 Miss. 669. And so was a railroad bridge, not constructed as a part of the road, and used for general purposes of travel: St. Joseph & G. I. R. Co. v. Devereux, 41 Fed. Rep. 14. Statutes providing

show that the exemptions made are so far diverse in their terms

for the payment, in lieu of all other taxes, of a certain percentage of railroad companies' gross receipts, were construed as exempting all the property of such corporations, whether actually used in the operation of railroads or not: *Northern Pac. R. Co. v. Barnes*, 2 N. D. 310; *Columbia & P. S. R. Co. v. Chilberg*, 6 Wash. 612; *McHenry v. Alford*, 168 U. S. 651. See *Fargo & S. W. R. Co. v. Brewer*, 3 N. D. 34; *Northern Pac. R. Co. v. McGinnis*, 4 N. D. 494. An exemption to a railroad company of "all machines, wagons, vehicles, or carriages belonging to the company, with all their works," etc., held to apply to their real estate as well as to their rolling stock: *Richmond v. Richmond & D. R. Co.*, 21 Grat. 604, citing *Baltimore v. Baltimore & O. R. Co.*, 6 Gill 288. A provision that a certain tax on the capital and debts of railroad companies should "take the place of all other taxes on railroad and horse-railroad property and franchises," held to exempt property whether used for railroad purposes or not: *Osborn v. New York & M. H. R. Co.*, 40 Conn. 491. And see in general, *The Tax Cases*, 12 G. & J. 117. A street-car stable, with the land whereon it stands, together with the horses and vehicles therein, are not taxable for county purposes, where they are all owned by a street-railway company and are used by it in its corporate business: *Northampton County v. Easton, S. E. & W. E. P. R. Co.*, 148 Pa. St. 282. A street-railway company exempt from ordinary state taxation will nevertheless be liable for a dog-tax: *Hendrie v. Kalthoff*, 48 Mich. 306. An exemption of the "road, rolling and live stock" of a street-railway company is not an exemption of its lots used for shops, stables, etc.: *Atlanta St. R. Co. v. Atlanta*, 66 Ga. 104. Lot and toll-

gatherer's dwelling-house thereon, owned by a plank-road company, were held exempt from general taxation as necessary to enable the company to discharge its duty to the public: *Detroit & S. P. R. Co. v. Detroit*, 81 Mich. 562. A charter exemption of a canal from taxation covers all the company's property which is a constituent part of the canal, incident thereto, and serving the purpose of the company by maintaining its navigation: *Carondelet Canal Nav. Co. v. New Orleans*, 44 La. An. 394. Where a canal is exempt from taxation the toll-house is not taxable: *Schuykill Nav. Co. v. Commissioners*, 11 Pa. St. 202. A charter exempting from taxation a canal company's property used for the actual and necessary purposes of canal navigation does not include a house and lot used for the residence of the assistant superintendent of the canal: *State v. Cleaver*, 46 N. J. L. 467. Buildings of a manufacturing corporation not on the factory grounds and used as dwellings for the employees are not exempt from taxation: *Adams v. Tombigbee Mills (Miss.)*, 29 South. Rep. 470. The capital stock of a rolling-mill company "invested in dwellings reasonably necessary for the use of its employees" is not exempt, as such dwellings, though convenient and advantageous, have no necessary connection with the business for which the company was incorporated: *Commonwealth v. Mahoning Rolling-Mill Co.*, 129 Pa. St. 360. A manufacturing corporation which moves its plant into the country, where there are no accommodations for its workmen, cannot claim as exempt from taxation capital invested by it in houses and lots for such workmen, since the necessity for the erection of such houses was created by itself, and it

as to raise many troublesome controversies, the decisions in which are not always harmonious.¹

cannot urge that they were absolutely necessary in its business: *Commonwealth v. Westinghouse Air-Brake Co.*, 151 Pa. St. 276. A gas company, otherwise exempt, may be taxed for county purposes on a dwelling-house situated on its land, but which it does not use in its business but rents to a tenant: *Schuylkill County v. Citizens' Gas Co.*, 148 Pa. St. 146. A statute abolishing taxes laid upon manufacturing corporations operates simply on capital employed in manufacturing, and does not exempt the capital of a manufacturing company invested in bonds, mortgages, city lots and store goods, or in quarrying or mining operations: *Commonwealth v. Lackawanna L. & C. Co.*, 129 Pa. St. 346. A manufacturing company claiming as exempt from taxation shares of stock in other corporations owned by it, on the ground that they were taken in exchange for its own manufactured products, has the burden of establishing that fact: *Commonwealth v. Westinghouse Air Brake Co.*, 151 Pa. St. 276. A statute exempting from taxation the real property of a board of trade "so long as such property shall be occupied by said board for the purposes contemplated in its organization" does not exempt such part of a building owned by the corporation as is rented to third persons, though the rent is applied to the board's purposes: *Louisville v. Louisville Board of Trade*, 90 Ky. 409. Where a bank charter provided that the bank might "purchase and hold a lot of ground for the use of an institution as a place of business," and also hold such property as might be conveyed to it to secure debts due the institution, and that it should pay to the state an annual tax of one-half of one per cent. on each

share of capital stock, "which shall be in lieu of all other taxes," held, that so much of the bank building as was not used for its business was taxable: *Bank v. Tennessee*, 104 U. S. 493. See *De Soto Bank v. Memphis*, 6 Baxt. 415.

¹ Exemption of deposits in savings banks: *People v. Coleman*, 135 N. J. 231; *People v. Peck*, 157 N. Y. 51; *People v. Dederick*, 158 N. Y. 414; *People v. Barker*, 164 N. Y. 122. And of investments of such deposits: *State v. Central Savings Bank*, 67 Md. 290; *In re Suffolk Savings Bank*, 149 Mass. 1. Exemptions in favor of building and loan or savings and loan associations: *Los Angeles v. State Loan, etc. Co.*, 109 Cal. 396; *Deniston v. Terry*, 141 Ind. 677; *Horn v. Woodward*, 151 Ind. 132; *Kansas City v. Mercantile Mut. B. & L. Assoc.*, 145 Mo. 50; *Territory v. Co-operative B. & L. Assoc. (N. M.)*, 62 Pac. Rep. 1097. Partial exemption of certain insurance companies from taxation: *People v. Coleman*, 121 N. Y. 542. What are to be regarded as manufacturing companies or corporations so as to be within the terms of exempting statutes, see *Frederick Electric L. & P. Co. v. Frederick City*, 84 Md. 599; *Greenville Ice & C. Co. v. Greenville*, 69 Miss. 86; *State v. Assessors*, 47 N. J. L. 36; *Press Printing Co. v. State Board*, 51 N. J. L. 51, 75; *People v. Knickerbocker*, 99 N. Y. 181; *People v. Wemple*, 129 N. Y. 543; *People v. Roberts*, 145 N. Y. 375; *People v. Roberts*, 155 N. Y. 1; *People v. Roberts*, 155 N. Y. 408; *Commonwealth v. Arnott Steam-Power Mills Co.*, 143 Pa. St. 69; *Commonwealth v. Northern E. L. & P. Co.*, 145 Pa. St. 105; *Commonwealth v. Edison E. L. & P. Co.*, 170 Pa. St. 231. What are companies "engaged in manufacture" so

Inheritances and successions. The exemptions of persons or of property in the so-called inheritance tax-laws are so numerous and so diverse that it is hardly possible to do more in this place than to group some of the many cases in which such ex-

as to be exempt, see *People v. Horn Silver Mining Co.*, 105 N. Y. 76; *Horn Silver Mining Co. v. New York*, 143 U. S. 305. As to what are corporations "organized exclusively for manufacturing purposes," so as to come within the exemption law of Pennsylvania, see *Commonwealth v. Westinghouse E. & M. Co.*, 151 Pa. St. 265; *Commonwealth v. Keystone Bridge Co.*, 156 Pa. St. 500; *Commonwealth v. Pottsville I. & S. Co.*, 157 Pa. St. 500; *Commonwealth v. Juniata Coke Co.*, 157 Pa. St. 507. Under the statute exempting from taxation corporations "organized exclusively for manufacturing purposes," a corporation chartered to do manufacturing business only, but which engages in other business as well as in manufacturing, or which invests part of its stock in property not used for manufacturing, is taxable only as to the amount of its capital employed otherwise than in manufacturing: *Commonwealth v. William Mann Co.*, 150 Pa. St. 64; *Commonwealth v. Westinghouse Air Brake Co.*, 151 Pa. St. 276; *Commonwealth v. Lippincott Co.*, 156 Pa. St. 513; *Commonwealth v. Juniata Coke Co.*, 157 Pa. St. 507; *Commonwealth v. East Bangor Consol. Slate Co.*, 162 Pa. St. 599. And so with a corporation chartered for and engaged in a business not authorized by any statute, in addition to its manufacturing business: *Commonwealth v. Thackra Manuf. Co.*, 156 Pa. St. 510. And see *People v. Campbell*, 144 N. Y. 166. For the meaning of the term "carrying on business in this state," applied to manufacturing companies in the New Jersey tax-law of 1884 as a condition of exemption, see *Norton N. C. & S. B. Co. v. State Board*, 53 N. J. L. 564; *State v. State Board*, 54 N. J. L. 430; *Edison Phonograph Co. v. State Board*, 55 N. J. L. 55; *American Glucose Co. v. State*, 43 N. J. Eq. 280; *Standard Under-Ground Cable Co. v. Attorney-General*, 46 N. J. Eq. 270. Construction of the New Jersey statute exempting from taxation corporations fifty per cent. of whose capital stock is invested in manufacturing within the state: *Edison United Phonograph Co. v. State Board*, 57 N. J. L. 520; *In re Consolidated Electric S. Co.* (N. J. Eq.), 26 Atl. Rep. 933. "Carrying on manufacture within" the state: *People v. Wemple*, 138 N. Y. 582. "Wholly engaged in carrying on manufacture within" the state: *People v. Campbell*, 145 N. Y. 587; *People v. Roberts*, 4 App. Div. (N. Y.) 388; *People v. Roberts*, 90 Hun 533. Exemption of gas and electric illuminating companies, as corporations of a public character, from local taxation: *Pittsburgh's Appeal*, 123 Pa. St. 374; *Commonwealth v. Northern Electric L. etc. Co.*, 145 Pa. St. 105; *Schuylkill County v. Citizens' Gas Co.*, 148 Pa. St. 146; *Southern Electric & P. Co. v. Philadelphia*, 191 Pa. St. 170; *St. Mary's Gas Co. v. Elk County*, 191 Pa. St. 458; *Ridgeway Light, etc. Co. v. Elk County*, 191 Pa. St. 465. So of a company chartered to improve a river and to take charge of general drives of logs, from real-estate taxation on its dams: *Yellow River Imp. Co. v. Wood County*, 81 Wis. 554. For other cases of special exemption, see *Armstrong v. Athens County*, 16 Pet. 281; *State v. Norwich & W. R. Co.*, 30 Conn. 290; *Lord v. Litchfield*, 36 Conn. 116; *State Bank v. Madison*,

emptions have been passed upon.¹ It has been decided that the United States are not a corporation "exempt by law from taxation" within the meaning of the New York statute imposing a tax on legacies to corporations not exempt; the corporations meant being such as are organized under the laws of New York for religious, educational, charitable, or reformatory purposes.²

When exemption accrues; loss or surrender. It has been decided that where land has become liable for taxes it remains so for that year although subsequently acquired for purposes rendering it exempt.³ The purchase of land by a bank the

3 Ind. 43; *Orr v. Baker*, 4 Ind. 86; Philadelphia, etc. R. Co. v. Bayless, 2 Gill 355; *Baldwin v. Hastings*, 83 Mich. 639; *Bear Lake, etc. Co. v. Ogden City*, 8 Utah 494; *Commonwealth v. Richmond & P. R. Co.*, 81 Va. 355; *Rex v. Calder*, 1 B. & Ald. 263. An act of the legislature giving a corporation power to extend its operations does not change its character or attributes, and therefore is not a new franchise; and if the original corporation was exempt from taxation the additional franchise cannot be taxed though not itself exempted: *State v. Society*, 43 N. J. Eq. 410.

¹ *Wilmerding's Estate*, 117 Cal. 281; *Stanford's Estate*, 126 Cal. 112; *Mahoney's Estate (Cal.)*, 65 Pac. Rep. 389; *Kochersperger v. Drake*, 167 Ill. 122; *Ayers v. Title, etc. Co.*, 187 Ill. 42; *In re McGhee's Estate*, 105 Iowa 9; *Herriott v. Bacon*, 110 Iowa 342; *Minot v. Winthrop*, 162 Mass. 113; *Chambe v. Wayne Probate Judge*, 100 Mich. 112; *Union Trust Co. v. Wayne Probate Judge*, 125 Mich. 487; *Le Duc v. Hastings*, 39 Minn. 110; *State v. Gorman*, 40 Minn. 232; *Drew v. Tift*, 79 Minn. 175; *State v. Switzler*, 143 Mo. 287; *State v. Henderson*, 160 Mo. 190; *Hinds v. Wilcox*, 22 Mont. 4; *Matter of McPherson*, 104 N. Y. 306; *Matter of Miller*, 110 N. Y.

116; *Matter of Gager's Will*, 111 N. Y. 344; *Matter of Howe's Estate*, 112 N. Y. 10; *Catlin v. Trustees*, 113 N. Y. 133; *Matter of Sherwell's Estate*, 125 N. Y. 376; *Matter of Merriam*, 141 N. Y. 479; *Matter of Hoffman*, 143 N. Y. 334; *Matter of Langdon*, 153 N. Y. 6; *Matter of Beach*, 154 N. Y. 242; *Matter of Bliss's Estate*, 6 App. Div. (N. Y.) 192; *Commonwealth v. Ferguson*, 137 Pa. St. 595; *Matter of Howell's Estate*, 147 Pa. St. 164; *Matter of Pepper's Estate*, 159 Pa. St. 508; *Matter of Kerr's Estate*, 159 Pa. St. 512; *Commonwealth v. Henderson*, 172 Pa. St. 135; *State v. Alston*, 94 Tenn. 674; *Bailey v. Drane*, 96 Tenn. 16; *State v. Mann*, 76 Wis. 469.

² *United States v. Perkins*, 163 U. S. 625; *Matter of Merriam*, 141 N. Y. 479.

³ *Colored Orphans' Assoc. v. New York*, 104 N. Y. 581. Property taxable when the books are open for correction of assessments, but afterwards, before they are closed, transferred to a corporation the property of which is exempt, does not thereby become exempt: *Sisters of the Poor v. New York*, 51 Hun 355. Where the tax year, as far as it related to real estate, began January first, and certain lands were declared to be exempt from taxation for eight years

property of which is exempt from taxation does not divest existing tax liens.¹ Where a constitution forbidding exemptions goes into effect after the time fixed for the assessment of property, the right to exemption from taxation for that year is not affected.² Long acquiescence, unexplained, in the imposition of taxes raises a presumption in favor of the surrender of the privilege of exemption.³ One may also be estopped by his own action from claiming exemption; as by procuring the incorporation of a town and the inclusion within its limits of his unplatted land used for farming purposes.⁴ While exemptions may in general be waived, a corporation cannot waive its exemption as against its bonds previously issued.⁵ The question whether an exemption has not been forfeited cannot be raised in an action between individuals based upon a tax deed given on a sale of exempt lands.⁶

Invidious exemptions. An exemption, it would seem, in order to be admissible, should be made either on the basis of contract, in which case the public is supposed to receive a full equivalent therefor, or it ought to be made on some ground of public policy, such as might justify a pension or a donation of the public funds on some general rule of which all who come within it may have the benefit; or such as, at least, makes the public at large interested in encouraging or favoring the class or interest in whose behalf the exemption is made.⁷ It is diffi-

from May 1, 1876, the term of the exemption began with the year 1877: *Swan v. State*, 77 Ala. 545.

¹ *State v. Ewing*, 11 Lea 172; *German Bank v. Louisville (Ky.)*, 56 S. W. Rep. 504.

² *Newport v. Masonic Temple Assoc.*, 103 Ky. 592.

³ *State v. Wright*, 41 N. J. L. 478; *Given v. Wright*, 117 U. S. 648. See *Wau-pe-man-qua v. Aldrich*, 28 Fed. Rep. 489; *Commissioners v. Simons*, 129 Ind. 193.

⁴ *Benedictine Order v. Central Covington*, 99 Ky. 7.

⁵ *Hand v. Savannah, etc. R. Co.*, 17 S. C. 219. For instances of waiver of

right of exemption, see *Seaboard, etc. R. Co. v. Norfolk County*, 83 Va. 195; *Citizens' Bank v. Board of Assessors*, 54 Fed. Rep. 73. For the surrender, by the acceptance of certain statutory provisions, of the immunity from increased taxation given to Kentucky banks by their charters, see *Deposit Bank v. Daviess County*, 102 Ky. 174, overruling several earlier cases.

⁶ *Mackall v. Canal Co.*, 94 U. S. 308.

⁷ See, on this subject, what is said by *Robertson*, Ch. J., in *Sutton's Heirs v. Louisville*, 5 Dana, 28, 31. Also *Morrison v. Larkin*, 26 La. An. 699.

cult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation.¹ It is certain that municipal bodies or taxing officers have no authority to make such exemptions unless expressly empowered by legislation; and to make any would render invalid the whole tax roll on which the exempted property or person ought to have appeared. The motives of the exemption or the beneficial purposes expected to be accomplished by it can make no difference.² No man is obliged to be more generous than the law requires; each may stand strictly on his legal rights, and refuse to submit to any exaction that purposely is made more burdensome to him than the rules of law permit.³ The legislature is equally

¹ *Hamilton v. Wilson*, 61 Kan. 511.

² *Thomas v. Snead* (Va.), 39 S. E. Rep. 586.

³ Per *Paine, J.*, in *Weeks v. Milwaukee*, 10 Wis. 242, 263. The case was one of an exemption of a block in the city of Milwaukee on which a hotel was about to be constructed; the common council directing it to be made "in view of the great public benefit which the construction of the hotel would be to the city." Compare *Exchange Bank v. Hines*, 3 Ohio St. 1; *Adams v. Beman*, 10 Kan. 37. In *Southern Hotel Co. v. St. Louis County*, 62 Mo. 134, the exemption of a hotel from taxation for ten years was enforced without question of the right. In *Henry v. Chester*, 15 Vt. 460, a tax list was held void because "The plain and obvious requisites of the statute in regard to making it up were disregarded, both by important and essential omissions, and by arbitrary additions without even the color of right or legal warrant. If this may be done and still the list be regarded as legal, so might it with equal propriety if the entire real estate in town were omitted or

inserted wholly at random without even the form of an appraisal." See *State v. Branin*, 23 N. J. L. 484; *Hershey v. Supervisors, etc.*, 16 Wis. 185; *Crosby v. Lyon*, 37 Cal. 242; *Attorney-General v. Pioneer Iron Co.*, 123 Mich. 521; *Primm v. Belleville*, 59 Ill. 142; *Kneeland v. Milwaukee*, 15 Wis. 454; *Smith v. Smith*, 19 Wis. 615; *Tampa v. Kaunitz*, 39 Fla. 683; *People v. McCreery*, 34 Cal. 432. Where from the tax-roll of a township a large amount of personalty there taxable was omitted, the real estate of such township being also assessed at one-fourth of its cash value, a sale of lands in other parts of the county for state and county taxes should not be decreed: *Auditor-General v. Prescott*, 94 Mich. 190. If a township board, in levying highway taxes upon the township's property, exempts the property in a particular village, the levy is void: *Auditor-General v. Duluth, S. S. & A. R. Co.*, 116 Mich. 122. Including in the assessment persons who are not liable, and against whom a tax cannot be enforced, does not invalidate the tax against the rest: *Inglee v. Bosworth*,

powerless if the constitution has prescribed a rule of equality which forbids exemptions.¹ Such a rule, it has been seen, is prescribed by the constitutions of some of the states, which, in terms or by necessary implication, require all private property in the state to be taxed in proportion to its value.²

Accidental omissions from taxation. It has been decided in a number of cases that accidental omissions from taxation, of persons or property that should be taxed, occurring through the negligence or default of officers to whom the execution of the taxing laws is intrusted, would not have the effect to vitiate the whole tax. The reasons for this conclusion are summarized in one of the cases as follows: "The execution of these laws is necessarily intrusted to men, and men are fallible, liable to frequent mistakes of fact, and errors of judgment. If such errors on the part of those who are attempting in good faith to perform their duties should vitiate the whole tax, no tax could ever be collected. And therefore, though they sometimes increase improperly the burden of those paying taxes, the rule which holds the tax not thereby avoided is absolutely essential to the continuation of the government."³ It seems

5 Pick. 493. See *Dillingham v. Snow*, 5 Mass. 547. An illegal exemption by the common council of one man from a sewer tax will not authorize another to have his tax enjoined where it appears that his payment is not increased by the exemption: *Page v. St. Louis*, 20 Mo. 136. The principle is that no one is to be heard to complain of that which works no injury to him. See *Sanford v. Dick*, 15 Conn. 447; *Case v. Dean*, 16 Mich. 12; *Davis v. Newark*, 54 N. J. L. 144.

¹ It is not competent to lay a tax for a general public purpose exclusively on one species of taxable property: *Gilman v. Cheboygan*, 2 Black, 510. See *Sinclair v. Learned*, 51 Mich. 335. Or on the property of only one section of the taxable district: *Dyar v. Farmington*, 70 Me. 515. Compare *Bright v. McCullough*, 27 Ind. 223; *Primm v. Belleville*, 59 Ill. 142. In assessing by benefits the

tax will be void if it appears that exemptions are made of property which should be taxed: *Alexander v. Baltimore*, 5 Gill 383, 390; *Masters v. Portland*, 24 Or. 161; *Savage v. Buffalo*, 131 N. Y. 568. Compare *Page v. St. Louis*, 20 Mo. 136.

² See *ante*, pp. 275-339. Lands owned by the state having been omitted in laying a local assessment, though they were expressly made assessable, the roll was held invalid: *Hassen v. Rochester*, 67 N. Y. 528. See Same Case, 65 N. Y. 516. Also *Clark v. Dunkirk*, 12 Hun 181.

³ *Paine, J.*, in *Weeks v. Milwaukee*, 10 Wis. 242, 262, where the following cases were cited and relied upon: *Spear v. Braintree*, 24 Vt. 414; *State v. Collector*, 24 N. J. L. 108; *Insurance Co. v. Yard*, 17 Pa. St. 331; *Williams v. School Dist.*, 21 Pick. 75. See, also, *State v. Randolph*, 25 N. J. L. 427, 431; *People v. McCreery*, 34

difficult to resist the force of this reasoning, and it applies to the case of a mistake of law with the same cogency as to the case of a mistake of fact. Indeed, where the omission has,

Cal. 432; *Tampa v. Kaunitz*, 39 Fla. 683; *Schofield v. Watkins*, 22 Ill. 62; *Dunham v. Chicago*, 55 Ill. 357, 361; *Vittum v. People*, 183 Ill. 154; *Anderson v. Mansfield*, 93 Ky. 230; *Dover v. Maine Water Co.*, 90 Me. 180; *Van Deventer v. Long Island City*, 139 N. Y. 133; *Shuttuck v. Smith*, 6 N. D. 56; *McTwiggan v. Hunter*, 18 R. I. 776; *Smith v. Smith*, 19 Wis. 615. In *Watson v. Princeton*, 4 Met. 599, 602, *Shaw*, Ch. J., says that the case of omission, through error of judgment or mistake of law, to tax property that should be taxed, can give no right of action to recover back any portion of the tax paid by another. "Various other remedies may be resorted to to secure just and legal taxation. The law is strict in requiring that the whole valuation shall be laid before the tax-paying inhabitants in order that any omission, mistake, or irregularity may be corrected before the tax is collected. It is for the interest of the town, and of the inhabitants generally, that each inhabitant liable should be taxed, and to the extent of his liability, and therefore it must be presumed to be the inclination of assessors to impose rather than omit a tax, in case of doubt, leaving the individual aggrieved to raise the question if he shall think fit. And the final remedy, if the inhabitants believe that their assessors are acting upon erroneous principles, is to elect others in their places." See, also, *George v. School Dist.*, 6 Met. 497; *Dean v. Gleason*, 16 Wis. 1. A mistake without intentional fraud or wrong, whereby personal property which should have been taxed is omitted from the tax-list, will not invalidate the list: *Wilson v. Wheeler*,

55 Vt. 446, citing *Henry v. Chester*, 15 Vt. 460; *Spear v. Braintree*, 24 Vt. 414. And see *Burlington, etc. R. v. Seward County*, 10 Neb. 211; *Same v. Saline County*, 12 Neb. 396; *State v. Maxwell*, 27 La. An. 722. Where the constitution required an *ad valorem* tax to be levied both on realty and personalty, and a city ordinance provided for such tax on realty alone, the omission to assess certain personalty in the mode prescribed did not avoid the entire ordinance, so as to entitle a taxpayer to an injunction to restrain the collection of taxes thereunder; but a court of equity might require the city council to correct the ordinance by assessing the personalty omitted from the *ad valorem* system, its value to be ascertained as of the date when the original assessment was required to be made: *Levi v. Louisville*, 97 Ky. 394. There has been some disposition in Illinois to hold that, even in the case of intentional omissions, the tax-roll should be sustained and the parties aggrieved should be left to their remedy against the assessor: *Schofield v. Watkins*, 22 Ill. 72; *Merritt v. Faris*, 22 Ill. 303, 311; *Dunham v. Chicago*, 55 Ill. 357, 361. But see *Primm v. Belleville*, 59 Ill. 142. And see *New Orleans v. Fourchy*, 30 La. An. 910. The omission by commissioners assessing benefits for public improvements to take into consideration all property benefited within the area of assessment will not be ground for disturbing their assessment if it did not vary or increase the assessment upon the proscutors: *Davis v. Newark*, 54 N. J. L. 144. In Minnesota it was held not a defense to the application for judgment for taxes against land that

occurred through no purpose to evade or disregard official duty, the occasion which produced it seems wholly immaterial.¹

Invidious assessments. A tax, when assessed by valuation, may be made unequal and oppressive by the unfairness with which the valuation is made. The remedies for an excessive valuation we have no purpose to consider in this place; they belong more properly to a subsequent part of the work. As a general rule, a tax cannot depend for its validity upon the ability of those who lay it to make plain its justice to the satisfaction of a court or jury. Value is matter of opinion, and when the law has provided officers upon whom the duty is imposed to make the valuation, it is the opinion of those officers to which the interests of the parties are referred.² The court cannot sit in judgment upon their errors, or substitute its own opinion for the conclusions the officers of the law have reached.³ It is possible, however, that there may be circum-

particular property had been willfully omitted from the tax-list: *State v. Lakeside Land Co.*, 71 Minn. 283.

¹ *Henderson v. Hughes County*, 13 S. D. 576. See *People v. McCreery*, 34 Cal. 432, where the mistake was one of law, but the omission was held not to be fatal. See, also, *Muscatine v. Railroad Co.*, 1 Dill. 536; *Burlington, etc. R. Co. v. Saline County*, 12 Neb. 396; *State v. Maxwell*, 27 La. An. 722; *Auditor-General v. Sage Land Co.* (Mich.), 88 N. W. Rep. 468.

² Proof that in some cases there has been an undervaluation is not sufficient to avoid a roll: *Georgia Midland & G. R. Co. v. State*, 89 Ga. 597; *Keokuk & H. Bridge Co. v. People*, 161 Ill. 514; *Shuttuck v. Smith*, 6 N. D. 56; *Marshall v. Benson*, 48 Wis. 558. Even though it is intentional and general: *Moss v. Cummings*, 44 Mich. 359; *Auditor-General v. Jenkinson*, 90 Mich. 523. See *State v. Lakeside Land Co.*, 71 Minn. 283. In such case only the increase imposed on the owners of other property in consequence thereof is invalidated: *Auditor-General v. Jenkinson*, 90 Mich.

523. But if, by error of judgment, an excessive tax is levied upon realty, a sale of lands for the tax is void: *Sinclair v. Leonard*, 51 Mich. 335. See *Kennedy v. Troy*, 14 Hun 308. Where the assessor and board of review intentionally remitted a large amount of personalty and realty from the roll, and greatly undervalued certain personalty and the business and residence property of a city in order to throw a heavier burden of taxation on the outlying land in the city, and there was no basis on which the court could estimate a reduction of the excessive portions of the tax, a decree holding the entire roll void as to all objectors was proper: *Attorney-General v. Pioneer Iron Co.*, 123 Mich. 521. One whose property is assessed at less than its cash value, but proportionately higher than others, cannot have his assessment reduced, but may have the others raised: *Carroll v. Alsup* (Tenn.), 64 S. W. Rep. 193. Further as to undervaluation in assessments see *post*, ch. XII.

³ *Shelby County v. Miss. & T. R. Co.*, 16 Lea 401.

stances under which the action of the officers will not be conclusive. Suppose it admitted, or established beyond a peradventure, that a public officer who has been empowered by the law to apportion certain burdens among the citizens, as in his judgment shall be just, has been actuated by a fraudulent purpose, and, instead of attempting to carry the law into effect, has wholly disregarded its mandate, declined to bring his judgment to bear upon the question submitted to him, and arbitrarily, with the intent and purpose to defeat the equity at which the law aims, has determined to impose an excessive burden upon a particular citizen. Suppose this to be unquestioned or unquestionable, can it be that the citizen has no remedy against the wrong intended?

Such a question, it would seem, could admit of but one answer. "A discretionary power cannot excuse an officer for refusal to exercise his discretion. His judgment is appealed to; not his resentments, his cupidity, or his malice. He is the instrument of the law to accomplish a particular end, through specified means; and when he purposely steps aside from his duty to inflict a wanton injury, the confidence reposed in him has not disarmed the law of the means of prevention. His judgment may indeed be final if he shall exercise it, but an arbitrary and capricious exertion of official authority, being without law, and done to defeat the purpose of the law, must, like all other wrongs, be subject to the law's correction."¹

¹ *Merrill v. Humphrey*, 24 Mich. 170. See *Pelton National Bank*, 101 U. S. 143; *Bureau County v. Railroad Co.*, 44 Ill. 229; *Chicago, etc. R. Co. v. Livingston County*, 68 Ill. 458; *Law v. People*, 87 Ill. 385; *Spring Valley Coal Co. v. People*, 157 Ill. 543; *Keokuk & N. H. Bridge Co. v. People*, 161 Ill. 514; *New Haven Clock Co. v. Kochersperger*, 175 Ill. 383; *Manson Loan, etc. Co. v. Heston*, 83 Iowa 377; *Adams v. Beaman*, 10 Kan. 37; *Woodman v. Auditor-General*, 52 Mich. 28; *Auditor-General v. Pioneer Iron Co.*, 123 Mich. 521; *State v. Central Pac. R. Co.*, 7 Nev. 99; *Buffalo, etc. R. Co. v. Erie County*, 48 N. Y. 93; *Western R. Co. v. Nolan*, 48 N. Y. 513; *Albany,*

etc. R. Co. v. Canaan, 16 Barb. 244; *Fuller v. Gould*, 20 Vt. 643, 644; *Stearns v. Miller*, 25 Vt. 20; *Wilson v. Marsh*, 34 Vt. 352; *Clarke v. Lincoln County*, 54 Wis. 580; *Brauns v. Green Bay*, 55 Wis. 113. That neither a state nor a municipality has a right to discriminate between residents and non-residents, see *ante*, pp. 168-171; *Brooks v. Mangan*, 86 Mich. 576; *Sayre v. Phillips*, 148 Pa. St. 482; *City Council of Charleston ads. State*, 2 Speers 719; *Nashville v. Althorp*, 5 Cold. 554. Compare *Jones v. Columbus*, 25 Ga. 610; *Martin v. Rosedale*, 130 Ind. 109; *Robinson v. Charleston*, 2 Rich. 317; *Titusville v. Brennau*, 143 Pa. St. 642.

Assessors indeed are clothed with a power which is *quasi-judicial*, but fraud vitiates even the most solemn judgments of courts, and the action of these *quasi-judicial* bodies cannot stand on any higher ground.¹ It may be that all presumptions should so far favor their action as to protect them against personal actions at the suit of parties aggrieved, but such presumptions cannot preclude inquiry when their action is questioned for fraud. The policy of the law may protect the person, but it would be defeated if legal effect should be given to such fraudulent levies.²

Duplicate taxation. It has been remarked on a preceding page,³ that, when personal property is taxed, duplicate taxation is sometimes imposed. By this was meant that such property sometimes, after being subjected to one levy for the support of government for the current year, is by a change of circumstances subjected to taxation a second time for the support of government during the same period. Such a case might possibly occur in consequence of the removal of the property, after the listing in one jurisdiction, into another where the time of listing was later.⁴ A system of indirect taxes, combined with a system of general taxation by value, must often have the effect to duplicate the burden upon some species of property or upon some persons, and the taxation of stockholders in a corporation, and also of the corporation itself, must sometimes produce a like result.⁵ There is also some-

¹ The mere fact of undervaluation in assessing property does not establish fraud: *Spring Valley Coal Co. v. People*, 157 Ill. 543; *Keokuk & H. Bridge Co. v. People*, 161 Ill. 514.

² See *Lefferts v. Calumet Supervisors*, 21 Wis. 51; *Mason v. Lancaster*, 4 Bush 406, 408; *Merrill v. Humphrey*, 24 Mich. 170. Proceedings taken by certain taxpayers which vacate an assessment as to them, while others, who have lost the like right by delay, remain taxed, do not produce inequality in a legal sense, especially if the lands relieved are liable to reassessment: *Matter of De Lancy*, 52 N. Y. 89.

³ *Ante*, p. 40.

⁴ See *Mayes v. Erwin*, 8 Humph. 290; *Hilgenberg v. Wilson*, 55 Ind. 210; *State v. Deering & Co.*, 56 Minn. 24; *De Arman v. Williams*, 93 Mo. 158; *Lasater v. Green* (Okl.), 62 Pac. Rep. 816; *Russell v. Green* (Okl.), 62 Pac. Rep. 817; *Kelley v. Rhoads*, 7 Wyo. 237. A tax assessed in April on logs is not a second tax because the land, before the logs were cut, was assessed in the preceding May: *Nelson Lumber Co. v. Loraine*, 22 Fed. Rep. 54.

⁵ See *Tennessee v. Whitworth*, 117 U. S. 129, 136, cited in *New Orleans v. Houston*, 119 U. S. 265, 277, and in many later cases.

times what seems to be a double taxation of the same property to two individuals; as where the purchaser of property on credit is taxed on its full value, while the seller is taxed to the same amount on the debt.¹ How this would operate may be readily perceived by supposing the extreme case that *all* the property in a town is sold on credit, in which case, if the property is taxed to the purchasers, and the debts to sellers, it is manifest that the town taxes twice as much wealth as lies within its borders.²

¹ See *Savings & L. Soc. v. Austin*, 46 Cal. 616. Duplicate taxation being illegal in California (*People v. Parks*, 58 Cal. 224), if the tangible property of a corporation is in Nevada and is there taxed, the shares cannot be assessed to the holders in California: *San Francisco v. Mackey*, 10 Sawy. 431, 22 Fed. Rep. 602. Taxation of railroad bonds secured by mortgage is invalid in California as double taxation: *Germania Trust Co. v. San Francisco*, 128 Cal. 589; *In re Fair's Estate*, 128 Cal. 607. The taxation of money lent by a savings bank, secured by mortgage, and of the property securing it, is not double taxation in Nevada: *State v. Carson City Savings Bank*, 17 Nev. 146. In New Hampshire, railroad bonds, although secured by mortgage, are taxable as money at interest: *Boston, C. & M. R. Co. v. State*, 62 N. H. 648. The fact that mortgages held by savings banks represent deposits, and depositors are taxed, does not render the result produced by the taxation of the mortgages as real estate double taxation: *Common Council v. Board of Assessors*, 91 Mich. 78. A statute providing for the taxation of mortgages is not open to the objection of imposing double taxation. It simply makes the holder of the mortgage share in the burden of taxation, instead of imposing it all upon the land itself: *People v. Sanilac Supervisors*, 71 Mich. 16. In Florida the owner of notes secured by mortgage

is not relieved from taxation thereon because the mortgaged land is also taxed to the owners: *Lamar v. Palmer*, 18 Fla. 147. Where solvent debts are taxable, a debt supposed to be collectible in part should be assessed for what it is estimated to be worth: *Ibid.* In New Jersey the assessor is to deduct from the valuation of land a mortgage upon it, if the owner of the land claims the deduction: *State v. Runyon*, 41 N. J. L. 98; *Darcy v. Darcy*, 51 N. J. L. 140. So though the mortgagee is a national bank: *Myers v. Campbell*, 64 N. J. L. 186. But a mortgage which is not taxable is not to be deducted: *State v. Trenton*, 40 N. J. L. 89. In Maryland mortgages may be taxed in the hand of the mortgagees, though the land is taxed also: *Appeal Tax Court v. Rice*, 50 Md. 302. So in Minnesota: *State v. Jones*, 24 Minn. 251. So in Alabama: *Insurance Co. v. Lott*, 54 Ala. 499. So in Nevada: *State v. Carson City Savings Bank*, 17 Nev. 146. And in Oregon: *Mumford v. Sewell*, 11 Oregon, 67; *Savings Soc. v. Multnomah County*, 169 U. S. 421. A contract for the sale of land, to be executed on payment of the purchase price, is a new or additional property, distinct from the property in the land; and taxation levied upon both properties is not double taxation: *Griffin v. Board of Review*, 184 Ill. 275.

² There is a case in Texas in which the indirect results of taxation were

Now, whether there is injustice in the taxation in every instance in which it can be shown that an individual who has been *directly* taxed his due proportion is also compelled *indirectly* to contribute is a question we have no occasion to discuss. It is sufficient for our purposes to show that the decisions are nearly, if not quite, unanimous in holding that taxation is not invalid because of any such unequal results.¹

followed up somewhat sharply. The law subjected "all property, real and personal," with certain exceptions, to taxation. A planter was taxed on his corn and cotton, but contested the tax as duplicate because he had already been taxed on his slaves and mules by which he produced the corn and cotton. The objection was found by the court to be insurmountable: *State v. Jones*, 5 Tex. 333.

¹*South Nashville St. R. Co. v. Morrow*, 3 Pickle 406. In this case it is said: "It is not every indirect duplication of a tax which constitutes double taxation. If the duplication be only an incident of the tax it is not double taxation in the sense of the requirement that equality and uniformity must be preserved." It is no objection to a tax graduated by the amount of a merchant's sales that part of the goods sold had been bought of another who had paid a tax thereon: *Mayes v. Swan*, 8 Humph. 290. The money of a depositor may be taxed to him, and the deposits of the bank, including this, may also be taxed to the bank: *Yuba County v. Adams*, 7 Cal. 35. See *Knox v. Shawnee County*, 20 Kan. 496. Where the same property represents distinct values belonging to different persons, the fact that each is taxed on the value which the property represents in his hands does not constitute double taxation obnoxious to the organic law of Maryland: *United States E. P. & L. Co. v. State*, 79 Md. 63. To constitute double taxation property must be twice taxed in the same ju-

risdiction: *Whitaker v. Brooks*, 90 Ky. 68. And therefore a non-resident's personalty may be taxed in the state where it is located, though it is also taxed in the state where it is owned: *Winkley v. Newton*, 68 N. H. 80; *Prairie Cattle Co. v. Williamson*, 5 Okl. 488. A non-resident carrying on a mercantile business in one state is taxable there, although he has paid in his own state taxes on the property: *Shaw v. Hartford*, 56 Conn. 351. Shares of stock in a foreign corporation are taxable to the owner in the state where he resides, even though he or the corporation has paid taxes on the stock or the corporate property in the state where the corporation was organized: *Greenleaf v. Board of Review*, 184 Ill. 226; *Whitaker v. Brooks*, 90 Ky. 68; *Appeal Tax Court v. Gill*, 50 Md. 377; *Great Barrington v. Commissioners*, 16 Pick. 572; *Dwight v. Boston*, 12 Allen 316; *Bacon v. Board of Tax Com'rs (Mich.)*, 85 N. W. Rep. 307; *McKeen v. Northampton County*, 49 Pa. St. 519; *Pittsburgh, etc. R. Co. v. Commonwealth*, 66 Pa. St. 73; *Dyer v. Osborne*, 11 R. I. 321. To the same effect are *Holton v. Bangor*, 23 Me. 264; *Smith v. Exeter*, 37 N. H. 566; *San Francisco v. Fry*, 63 Cal. 470; *Worth v. Ashe County*, 82 N. C. 420, 90 N. C. 409. Where by law the property of a corporation is to be taxed like that of individuals, the shares are taxable also: *Danville B. & T. Co. v. Parks*, 88 Ill. 170; *Greenleaf v. Board of Review*, 184 Ill. 226; *State v. Jersey City*, 45 N. J. L. 480. Where

It cannot be too distinctly borne in mind that any possible system of tax legislation must inevitably produce unequal and unjust results in individual instances; and if inequality in result must defeat the general law, then taxation becomes im-

the tangible property of a corporation is assessed for taxation it should be deducted as constituting a factor in determining the value of the stock, and because, having been once assessed, taxation of it again under the name of stock would be double: *State v. Simmons*, 70 Miss. 485. Assessment of capital stock held not double taxation in absence of proof of failure to deduct valuation of tangible personalty: *Distilling, etc. Co. v. People*, 161 Ill. 101. In Washington it is held that the capital stock of a corporation whose property is properly taxable in the state cannot be assessed to the individual stockholders resident in the state: *Ridpath v. Spokane County* (Wash.), 63 Pac. Rep. 261. Taxation of an entire railroad and, in addition, of a wharf whereupon its tracks terminated, held not to constitute double taxation: *Pacific Coast R. Co. v. Ramage* (Cal.), 37 Pac. Rep. 532. Distillers may be taxed on their whiskey stored in their warehouses, though they have paid a tax on the business of wholesale liquor merchants carried on by them separate from the distillery: *Frankfort v. Gaines*, 88 Ky. 59. A provision that the payment of certain fees by life insurance companies shall be "in lieu of all fees and taxes whatever, except that they may be taxed upon their paid-up capital stock the same as other property in the county for county and municipal purposes," will not prevent the taxation of other property owned by companies over and above par value of capital stock: *St. Louis M. L. Ins. Co. v. Board of Assessors*, 56 Mo. 503. Income may be taxed though invested in real estate which is taxed the same year: *Lott v. Hubbard*, 44 Ala. 593.

See *United States v. Schellinger*, 14 Blatch. 71. Taxation of the owner of lands already taxed to long-term lessees because of his net income therefrom is, in effect, taxation of the realty, and is not authorized by law: *Kennard v. Manchester*, 68 N. H. 61. Income as used in a statute exempting incomes from taxation, held to mean the creation of capital, industry, and skill: *Wilcox v. Middlesex County*, 103 Mass. 544. See *People v. Supervisors*, 18 Wend. 605; *Matter of Western Railway*, 5 Met. 596; *Commonwealth v. Ocean Oil Co.*, 59 Pa. St. 61. Income means that which comes in and is received from any business or investment of capital without reference to the outgoing expenditures. Profits, on the other hand, are understood to mean the net gain of any business or investment, taking into account both receipts and payments. Income, as applied to the affairs of individuals, expresses the same idea that revenue does when applied to the affairs of government: *People v. Supervisors*, 4 Hill 20, 7 Hill 504. See *Miller v. Douglass*, 42 Tex. 288; *New Orleans v. Hart*, 14 La. An. 803; *New Orleans v. Fossman*, 14 La. An. 865. As to difference between "annual value" and "annual income," see *Troy Iron & Nail Factory v. Winslow*, 45 Barb. 231. "Annual income" as a basis of taxation: See *Goldsmith v. Central R. Co.*, 62 Ga. 509. As to meanings of gross earnings, see *State v. St. Paul, etc. R. Co.*, 30 Minn. 311. As to when the earnings of a railroad are "undivided profits," see *United States v. Railroad Co.*, 17 Fed. Rep. 719. Capital, it has been held signifies the actual estate, whether in money or property, which is owned

possible,¹ and governments must fall back upon arbitrary exactions.² But no such impracticable principle is recognized in revenue laws. While equality and justice are constantly to be aimed at, impossibilities are not demanded. Tax legislation must be practical.³ It is one of the reasons for levying indirect taxes, and other taxes than those on property by value, that they are supposed to diminish the inequalities that would exist if a single species of taxation only were to be levied. The legislature must judge of the general result, and when the law has apportioned the tax, individual hardships must be regarded as among the inconveniences which are incident to regular government. The same necessity that justifies any taxation will justify and sustain any reasonable provisions for giving it effect. The necessity of the state and of reasonable provisions for the security of the individual must be equally considered; the state is no more to be deprived of its revenue, because of individual hardship, resulting from general rules, than is the individual to be stripped of his property without law, because in its necessity the state finds it more convenient to take it thus than by regular proceedings. The incidental hardship or inconvenience must be submitted to in either case.

These general views have often been declared by able jurists. "Property," it is said in one case, "is liable in many cases to be taxed twice, when it would appear difficult or unsafe to make provision by law to prevent. Thus, stock in trade may be taxed to the owner, while he may be indebted for it to many persons who may be taxed for those debts or the money loaned to purchase it. Real estate may be taxed to a mortgager in possession while the mortgagee is taxed for the money secured

by an individual or corporation. In reference to a corporation, it is the aggregate of the sum subscribed and paid in, or to be paid in, by the shareholders, with the addition of profits on the residue, after the deduction of losses: *People v. Commissioners*, 23 N. Y. 192, 219. See *People v. Feitner*, 167 N. Y. 1. In *Mechanics'*, etc. *Bank v. Townsend*, 5 Blatch. 315, capital was held not to include surplus earnings, though undivided. See, to the same effect, *State v. Bank of Commerce*, 95 Tenn. 221. As to

what constitutes the "capital" of a bank, see *New Orleans v. Citizens' Bank*, 167 U. S. 371.

¹ *Pacific Nat. Bank v. Pierce County*, 20 Wash. 675.

² *Lee v. Sturges*, 46 Ohio St. 153.

³ "There is nothing poetical about tax laws. Wherever they find property they claim a contribution for its protection, without any especial respect to the owner or his occupation." *Lowrie*, Ch. J., in *Finley v. Philadelphia*, 32 Pa. St. 381.

by the mortgage. . . . So imperfect are all human institutions that perfect equality in the imposition of burdens is not to be expected. These provisions for valuation are not considered to be in conflict with the general purpose to have all property subjected to taxation once, and only once at the same time.”¹ “The power to tax twice,” it is said in another case, “is as ample as to tax once.”² We make out, therefore, no

¹ *Augusta Bank v. Augusta*, 36 Me. 255, 259. See *People v. Worthington*, 21 Ill. 170; *People v. Sanilac Supervisors*, 71 Mich. 16; *St. Louis L. Ins. Co. v. Assessors*, 56 Mo. 503; *Kirby v. Shaw*, 19 Pa. St. 258. For cases of apparent double taxation by a tax on business, see *Savannah v. Charlton*, 36 Ga. 460; *Burch v. Savannah*, 42 Ga. 596; *Sacramento v. Crocker*, 16 Cal. 119; *Coulson v. Harris*, 43 Miss. 728; *Woolman v. State*, 2 Swan 353. As to the impossibility of avoiding inequalities in highway taxes, see *Hingham, etc. Turnpike Co. v. Norfolk County*, 6 Allen 353, 359. Railroad bonds are taxable to the owner though the company pays a tax on the market value of its stock and on its debt, in lieu of all taxes on property and franchises: *Bridgeport v. Bishop*, 33 Conn. 187. Taxing an individual owner's cars and the railroad companies for earnings is not duplicate taxation: *Comstock v. Grand Rapids*, 54 Mich. 641. A statute requiring hospital expenses of insane person to be paid out of his estate is not double taxation: *Yturburru's Estate (Cal.)*, 66 Pac. Rep. 729.

² *West Chester Gas Co. v. Chester County*, 30 Pa. St. 232, per *Porter, J.*, cited with approval in *Pittsburgh, etc. R. Co. v. Commonwealth*, 66 Pa. St. 73, 77, 78. See, also, *Erie R. Co. v. Commonwealth*, 66 Pa. St. 84; *Eberville Coal Co. v. Commonwealth*, 91 Pa. St. 47, 54; *Davidson v. New Orleans*, 96 U. S. 97; *Reclamation Dist. v. Hagar*, 6 Sawy. 567. Congress having levied a tax upon an article is not thereby precluded from levy-

ing another: *U. S. v. Benzon*, 2 Cliff. 512. In *Philadelphia Savings Fund v. Yard*, 9 Pa. St. 359, 361, in referring to the case of *The Carlisle Bank*, 8 Watts 291, the following remarks are made: “The horror of double taxation, manifest in that case, is unsuited to the times; for it has obtained, and must prevail in the exigencies of the commonwealth. It exists in the case of ground rents, where the ground itself and the *reditum* issuing from it are taxed; in a tax upon a mortgage to the whole value of the land, and the land itself. And so, where A. borrows money on mortgage and loans it to C. on bond, and who loans a part of it to D., it is taxed in the current of each actual employment. In the complexity and involutions of business, a dollar is employed many times in a day, and in each actual employment represents the property, business or the person of him who uses it. And in cases of this kind, it is the usufruct, and not the actual or identical money, that is taxed.” In *Pittsburgh, etc. R. Co. v. Commonwealth*, 66 Pa. St. 73, 77, it is said double taxation is of frequent occurrence. “The real and personal property of a corporation may be taxed, although it pays a tax on the stock which purchased it: *Lackawana Iron Co. v. Luzerne County*, 42 Pa. St. 424, 431. See *Carbon Iron Co. v. Carbon County*, 39 Pa. St. 251; *West Chester Gas Co. v. Chester County*, 30 Pa. St. 332; *Philadelphia Savings Fund v. Yard*, 9 Pa. St. 361. The power of the legislature is as ample to tax twice as to tax

conclusive case against a tax, when we show that it reaches twice the same property for the same purpose. This may have been intended, and in many cases, at least, is admissible.¹

once (30 Pa. St. 332); and it is done daily, as all experience shows: 9 Pa. St. 361. Equality of taxation is not required by the constitution: Kirby v. Shaw, 19 Pa. St. 258. The stock may be full taxed to the institution and also to the stockholders (Whitesell v. Northampton County, 49 Pa. St. 526, 529); and the stockholder in a corporation of another state is obliged to pay a tax to Pennsylvania on his stock, he being a resident here, although the whole profit and stock is subject to taxation in the state of its location."

¹ Toll-bridge Co. v. Osborn, 35 Conn. 7. is a strong case. A corporation was chartered to build and maintain a toll-bridge, with power, "for the purpose of carrying the resolve into effect," to purchase and hold lands not exceeding one hundred acres. The company built the bridge, and soon after purchased a large quantity of mud flats adjoining the bridge, and erected wharves upon it, which became of great value and were profitably rented. An act, passed in 1847, provided that the real estate of any private corporation, "above what was required and used for the transaction of its appropriate business," should be liable to be assessed and taxed to the same extent as if owned by individuals. *Held*, that the real estate thus used by the company for wharves was liable to taxation under the statute. The facts in this case were such, that the property was really taxed several times. By the decision of the court, the corporation was compelled to pay a tax upon this property; the shareholders paid a tax upon their shares of stock which represented this property; and the corporation also paid a tax upon

its capital stock; and, furthermore, as a great part of the stock was owned by a railway company, they might be taxed as shareholders, and also upon their capital stock, of which these shares were a part, while the shareholders in the railway company might be required to pay a tax upon their shares also. But the court held that it mattered not, so long as the legislative intent was clear: Compare Jones, etc. Manuf. Co. v. Commonwealth, 69 Pa. St. 137. Taxing a bank on shares of stock held by it in other corporations is not invalid, though perhaps resulting in double taxation: Pacific Nat. Bank v. Pierce County, 20 Wash. 675. The payment of a tax imposed on all corporations doing business in the state does not relieve a corporation engaged in operating an hotel from paying the tax imposed on hotel-keepers: Cobb v. Commissioners, 122 N. C. 307. It is not double taxation to exact a license tax for the privilege of carrying on a business, and at the same time to impose a tax upon the property used by the licensee in carrying on the business: Covington v. Woods, 98 Ky. 344; St. Louis v. Bircher, 7 Mo. App. 169; St. Louis v. Green, 7 Mo. App. 468; New Orleans v. People's Ins. Co., 27 La. An. 519; New Orleans v. Insurance Co., 27 La. An. 656; Morgan v. Commonwealth, 98 Va. 812. A state may impose upon a bank a privilege tax and upon the bank's assets an *ad valorem* tax: Supervisors v. Kelly, 68 Miss. 40. An ordinance levying an occupation tax on railroads held not an attempt to impose a tax on the depot of a company in addition to the general tax thereon: York v. Chicago, B. & Q. R. Co., 56 Neb. 572. Under Nebraska's consti-

There is a sense, however, in which duplicate taxation may be understood — and which we think is the proper sense — which would render it wholly inadmissible under any constitution requiring equality and uniformity in taxation. By duplicate taxation in this sense is understood *the requirement that one person or any one subject of taxation shall directly contribute twice to the same burden, while other subjects of taxation belonging to the same class are required to contribute but once.*¹

tution an occupation tax may be imposed on liquor dealers in addition to the license tax on sales of liquor: *State v. Bennett*, 19 Neb. 191. One who has in the same building a livery stable and a sale stable may be required to take out licenses for both businesses, and cannot resist on the ground that the city is taxing him twice for the same business: *Carson v. Forsyth*, 94 Ga. 617. That a corporation pays a license to carry on the business of making and selling doors, sashes, etc., does not exempt it from paying the license required for using wagons and drays, even though such use is necessary to carrying on the corporation: *Macon Sash, etc. Co. v. Mayor*, 96 Ga. 23. A license tax for retailing cigars may be required, although the cigars are sold in connection with a grocery business for which the grocer has taken out a general license: *Mobile v. Craft*, 94 Ala. 156. A license tax for carrying on the business of selling beer may be required although the same person may already have taken out a license to sell spirituous and vinous liquors, and although both businesses may have been carried on in the same establishment: *Daus v. Macon*, 103 Ga. 774. Where personalty was properly taxed in a county where the owner then resided, his subsequent removal from the county and payment of a tax elsewhere did not affect his liability to the county: *De Arman v. Williams*, 93 Mo. 158; *Hopkins v. Brown*

Tobacco Co., 140 Mo. 218. If one moves into a city before the time for listing him for taxation there, the fact that he is already listed for taxation at his former residence will not preclude city taxation: *Hilgenberg v. Wilson*, 55 Ind. 210. A state may tax the real estate of railroads as that of individuals is taxed, notwithstanding such real estate is essential to enable them to exercise their franchises in the operation of their roads: *Pennsylvania R. Co. v. Pittsburgh*, 104 Pa. St. 522.

¹ *McNeill v. Hagerty*, 51 Ohio St. 255; *Commonwealth v. New York L. E. & W. R. Co.*, 150 Pa. St. 234; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406; *Lewiston Water & P. Co. v. Asotin County (Wash.)*, 64 Pac. Rep. 544; *Second Ward Savings Bank v. Milwaukee*, 94 Wis. 587. Notes given by a court commissioner for the price of land sold are not taxable in the commissioner's hands, and are exempt from being listed for taxation by the clerk of the court which appointed the commissioner. To tax notes so held would be subjecting the same property to double taxation, which is illegal: *Fulkerson v. Treasurer*, 95 Va. 1. Under certain statutory provisions for a license tax on merchants their capital could not be taxed otherwise: *Montgomery County Supervisors v. Tallant*, 96 Va. 723. Under a statute providing that savings banks shall pay from interest due depositors the state tax on deposits, the deposits invested in

We do not see, for instance, how a tax on a merchant's stock distinctively by value could be supported, when by the same authority and for the same purpose the same stock was taxed by value as a part of his whole property. This is a very different thing from one tax upon property and another upon the business, though the latter may indirectly reach the property: here is no circumlocution, no question of ultimate effects; but

ground rents under long and renewable leases on property taxable to leasehold owner are not taxable, as this would be double taxation: *State v. Central Savings Bank*, 67 Md. 290. A vendor of land cannot be taxed both on the land and the proceeds of the sale: *Sheibly v. Rome*, 107 Ga. 384. Personality held by an assignee of an insolvent debtor whose estate is settling in the probate court is not subject to taxation; equitably the fund belongs to the creditors whose duty it is to list their claims as credits, so that to tax as aforesaid would be double taxation: *McNeill v. Hagerly*, 51 Ohio St. 255. Double taxation may consist in requiring a double contribution to the same tax on account of the same property, even though the assessments are to different persons: *Germania Trust Co. v. San Francisco*, 128 Cal. 589. The statute providing for taxing oyster-beds to maintain the levee system must be enforced without imposing special assessments twice on the same property: *Board of Com'rs v. Mialegvich*, 52 La. An. 1292. The same territory cannot legally be made part of two levee districts and subjected to levee taxes in both. *Abascal v. Bouny*, 37 La. An. 538. If by law a vessel may be assessed in different districts, assessment in one is exclusive of others: *Halstead v. Adams*, 108 Ill. 609. To make a defense of double taxation available one must show that he has paid one of the taxes: *Heath v. McCrea*, 20 Wash. 342. Where double assessment is caused by a party's voluntary act, as

where a railroad company falsely returned certain lots as part of its "railroad track" and paid the tax levied thereon in pursuance of an assessment by the state board, but was also required to pay an assessment upon the lots made by the town assessor, there is no remedy: *Chicago, B. & Q. R. Co. v. Quincy*, 136 Ill. 660. Where the statute provided that corporations owning pastures lying on county boundaries should list for assessment all their live-stock therein in the several counties in such proportion of the stock as the land in each county bore to the whole pasture, the live-stock of a corporation was liable for taxes assessed thereon in each county, although taxes on the entire herd had been assessed and paid in the county wherein the management of the business was conducted: *Nolan v. San Antonio Ranch Co.*, 81 Tex. 315. For a case where taxation of the property in a city for parish purposes was not allowed when it would have been double taxation, see *Felix v. Wagner*, 39 La. An. 391. Where a statute regulating the sale of fertilizers had prescribed certain fees for analysis, etc., it was held that such fees were not taxes, and hence the statute was not invalid as subjecting dealers in fertilizers to double taxation: *Vanmeter v. Spurrier*, 94 Ky. 22. Assessing land to one man and timber standing thereon to another who has bought such timber is not double taxation: *Globe Lumber Co. v. Lockett* (La.), 30 South. Rep. 902.

a tax levied twice on the same subject, only under different names. The same may be said of a tax on the property of a corporation and also on the capital which is invested in the property; if the latter is taxed as property, this also is duplicate taxation, and as much unequal as would be the taxation of a farmer's stock by value when on the same basis it is taxed as a part of his general property. When, for instance, the money paid in as capital of a manufacturing corporation has been invested in buildings and machinery, these are what then represent the capital, and to tax the capital as valuable property distinct from that which then represents it would be to tax a mere shadow;¹ it would be to make the shadow stand

¹ That the capital of a corporation is represented by the property in which it has been invested can hardly require the citation of authorities, but the following may be referred to: *Gordon's Executor v. Baltimore*, 5 Gill 231; *Mayor, etc. v. Baltimore & O. R. Co.*, 6 Gill 288; *Tax Cases*, 12 Gill & J. 117; *State v. Cumberland & P. R. Co.*, 40 Md. 22; *Rome R. Co. v. Rome*, 14 Ga. 275; *Augusta v. Georgia R. etc. Co.*, 26 Ga. 651; *Auditor v. New Albany, etc. R. Co.*, 11 Ind. 570; *Conwell v. Connersville*, 15 Ind. 150; *Connersville v. Bank of Indiana*, 16 Ind. 105; *Salem Iron Factory v. Danvers*, 10 Mass. 515; *Amesbury Woolen, etc. Co. v. Amesbury*, 17 Mass. 461; *Boston, etc. Glass Co. v. Boston*, 4 Met. 181; *Boston Water Power Co. v. Boston*, 9 Met. 199; *Middlesex R. Co. v. Charleston*, 8 Allen, 330; *Bangor & P. R. Co. v. Harris*, 21 Me. 533; *Cumberland M. R. v. Portland*, 37 Me. 444; *Hannibal, etc. R. Co. v. Shacklett*, 30 Mo. 550; *State v. Tunis*, 23 N. J. L. 546; *Mutual Ins. Co. v. Supervisors*, 4 N. Y. 442; *Smith v. Exeter*, 37 N. H. 556; *Fitchburgh R. Co. v. Prescott*, 47 N. H. 62; *Hubbard v. Brush*, 61 Ohio St. 252; *Burke v. Badlam*, 57 Cal. 594; *Savings Bank v. New London*, 20 Conn. 111, 117; *New Haven v. City Bank*, 31 Conn. 106; *Bridgeport v. Bishop*, 33 Conn. 187; *Toll Bridge*

Co. v. Osborn, 35 Conn. 7; *Coatesville Gas Co. v. Chester County*, 97 Pa. St. 476; *Lewiston Water & P. Co. v. Asotin County (Wash.)*, 64 Pac. Rep. 544; *San Francisco v. Mackey*, 21 Fed. Rep. 539. Where a manufacturing company's stock does not exceed in value the property which it represents, all of which is assessed to the corporation, it should not be assessed to the stockholders: *Willard v. Pike*, 59 Vt. 202. Under the Washington statutes a stockholder of a domestic corporation owning property within the state as well as out of it cannot be assessed for his shares: *Ridpath v. Spokane County (Wash.)*, 63 Pac. Rep. 261. Where the property in which the capital stock of a corporation is invested is taxed, and the capital stock is also assessed, it will not be inferred that the assessment is on some intangible property of the corporation other than that assessed: *Lewiston Water & P. Co. v. Asotin County (Wash.)*, 64 Pac. Rep. 544. For the distinction between a tax on the franchise of a corporation and a tax on its capital as property, see *Bank of Commerce v. New York*, 2 Black 620; *Van Allen v. Assessor*, 3 Wall. 573; *Bradley v. People*, 4 Wall. 559. The law of these cases is that where the tax is on the capital by a valuation as property, it is invalid if

for the substance in order that it might be taxed, when the substance itself is taxed directly under its own proper designation.¹ We do not speak here of a taxation of the property and also of the franchise, those being two things, as will be seen further on.²

the capital is invested in non-taxable securities. But in taxing banks, legal tenders received in current business are not to be excluded: *New Orleans v. Canal, etc. Co.*, 29 La. An. 851, 32 La. An. 157. Under a statute providing that the capital stock shall not be assessed, but that the actual shares shall be assessed to the stockholders, no deduction is to be made on account of bonds owned by the corporation and exempt from taxation: *Home Ins. Co. v. Board of Assessors*, 42 La. An. 1131. Only that part of a bank's surplus capital is liable to taxation which is not invested in tax-paying property or property exempt from taxation: *Mechanics' Nat. Bank v. Concord*, 68 N. H. 607. Cash in the treasury is not taxable separately, as it enters into the value of the shares: *Fall River v. Bristol County*, 125 Mass. 567. Under a statute allowing railroad companies to deduct from the valuation of their stock, debts, and bonds, "the money actually on hand in cash in the treasury," loans to other railroads on long time, or stock of other companies not intended to be sold, cannot be deducted: *State v. New York, N. H. & H. R. Co.*, 60 Conn. 326. Property subjected by a bank to its ownership under a mortgage to secure stock subscriptions is taxable as part of its capital: *State v. Board of Assessors*, 48 La. An. 35; see *New Orleans v. Citizens' Bank*, 167 U. S. 371. The stock of a domestic corporation owned by non-residents was held to be taxable in Maryland, although in determining the value real estate owned by the corporation in another state was considered: *American Coal*

Co. v. Alleghany Co., 59 Md. 185. Where a cemetery company pays a tax on its realty, the fact that the value of its capital stock is real estate does not exempt it from taxation on such capital stock: *Commonwealth v. Hillside Cemetery Co.*, 170 Pa. St. 227. To tax to a corporation its real estate, and then take it into account in fixing the value of its shares, results in double taxation: *Wheeler v. Board of Com'rs*, 88 Me. 174. To tax a seat in a stock exchange in addition to the taxes upon all the property of the exchange would be double taxation and void: *San Francisco v. Anderson*, 103 Cal. 69. In Indiana where the entire capital of a corporation is invested in tangible property which is taxed, the assessment of the capital stock is forbidden: *Hyland v. Brazil Block Coal Co.*, 128 Ind. 335. Under a tax law providing that except as to real estate all taxation of state banks shall be against the stockholders, a savings bank was not liable to taxation as a corporation for its bank fixtures and surplus of property beyond its nominal capital stock, where its stockholders had been taxed upon their shares: *Lenawee County Savings Bank v. Adrian*, 66 Mich. 273.

¹ *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406.

² When a railroad is taxable at a certain rate only upon the capital stock paid in, "if the property is of greater value than the whole amount paid in, the excess is not stock within the sense and meaning of the charter, but accumulation from appreciation or profit, and is therefore subject to taxation at the gen-

Presumption against duplicate taxation. It has very properly and justly been held that a construction of tax laws was not to be adopted that would subject the same property to be twice charged for the same tax, unless it was required by the express words of the statute, or by necessary implication.¹ It is a fundamental maxim in taxation that the same property shall not be subject to a double tax payable by the same party,

eral rate at which the property of the people is assessed." If the paid-up stock exceed the amount authorized by charter, such excess "would not fall under the charter limit as to the rate of taxation:" *Goldsmith v. Rome R. Co.*, 62 Ga. 473. As to taxing the property instead of the capital stock, see this case, and *Goldsmith v. Georgia R. Co.*, 62 Ga. 485. Where the statute prohibited the collection of any tax on mortgages, it was held that this did not preclude the taxation of a corporation on its whole capital stock, though some of it was represented by mortgages; the purpose of the statute being only to exempt mortgages as such: *Emory v. State*, 41 Md. 38. There is no duplicate taxation where a corporation is assessed on its tangible property, and also on the value of its capital stock in excess of the value of tangible property: *Porter v. Rockford, etc. R. Co.*, 76 Ill. 561; *Chicago, etc. R. Co. v. Siders*, 88 Ill. 320, and cases cited; *Chicago, etc. R. Co. v. Raymond*, 97 Ill. 212; *Hamilton Manuf. Co. v. Massachusetts*, 6 Wall. 632, and cases cited. In assessing shares, the value of the franchises is to be considered: *Stratton v. Collins*, 43 N. J. L. 562. If a corporation holds any of its own stock, it is taxable for it when an individual owner would be: *Richmond, etc. R. Co. v. Alamance County*, 84 N. C. 504. Where a bank owned its bank building and rented a part of it, it was held that this represented the capital stock in part, and

a tax on the par value of the shares was a tax on the whole: *Lackawana County v. National Bank*, 94 Pa. St. 221. Taxing an owner of corporate shares on account of his ownership, and imposing a tax on the corporation's gross receipts, held not double taxation: *United States E. P. & L. Co. v. State*, 79 Md. 63.

¹*Tennessee v. Whitworth*, 117 U. S. 129, 136; *New Orleans v. Houston*, 119 U. S. 265, 277; *Board of Revenue v. Gas Light Co.*, 64 Ala. 269; *Savings Bank v. New London*, 20 Conn. 111, 117; *Toll Bridge Co. v. Osborn*, 35 Conn. 7; *Osborn v. New York & N. H. R. Co.*, 40 Conn. 491; *Bank of Georgia v. Savannah*, Dudley 130; *Gordon's Executors v. Baltimore*, 5 Gill 231; *The Tax Cases*, 12 Gill & J. 117; *Salem Iron, etc. Co. v. Danvers*, 10 Mass. 514; *Amesbury Woolen, etc. Co. v. Amesbury*, 17 Mass. 461; *Water Power Co. v. Boston*, 9 Met. 199, 202; *Smith v. Burley*, 9 N. H. 423; *Savings Bank v. Portsmouth*, 52 N. H. 17; *Kimball v. Milford*, 54 N. H. 406; *State v. Collector*, 37 N. J. L. 258; *State v. Jersey City*, 46 N. J. L. 194; *People v. Commissioners*, 37 N. Y. 554; *McNeill v. Hagerty*, 51 Ohio St. 255; *Commonwealth v. Fall Brook Coal Co.*, 156 Pa. St. 488; *Ridpath v. Spokane County (Wash.)*, 63 Pac. Rep. 261; *Lewiston Water & P. Co. v. Asotin County (Wash.)*, 64 Pac. Rep. 554; *Ohio Valley B. & L. Assoc. v. County Court*, 42 W. Va. 818. A statutory provision that stockholders shall not be taxed for their stock already assessed to the corporation

either directly or indirectly;¹ and where it is once decided that any kind or class of property is liable to be taxed under one provision of the statutes, it has been held to follow, as a legal conclusion, that the legislature could not have intended that the same property should be subject to another tax, though there may be general words in the law which would seem to imply that it may be taxed a second time.² This is a sound

was held not repealed by a later statute providing that the real and personal estate of every corporation should be taxed the same as that of an individual: *State v. Jersey City*, 46 N. J. L. 194. A statute providing for taxing the property of corporations, and a later one providing for taxing shares of stock of banks, were held not to provide for double taxation as to banks, but simply for a different method of taxation upon the latter: *Western Invest. Banking Co. v. Murray* (Ariz.), 56 Pac. Rep. 728.

¹ *Chicago v. Collins*, 175 Ill. 445.

² *Tennessee v. Whitworth*, 117 U. S. 129; *Board of Revenue v. Gas Light Co.*, 64 Ala. 269; *Osborn v. New York & N. H. R. Co.*, 40 Conn. 491; *Rome R. Co. v. Rome*, 14 Ga. 275; *United States Express Co. v. Ellyson*, 28 Iowa 370; *Cook v. Burlington*, 59 Iowa 251; *Smith v. Burley*, 9 N. H. 423; *Smith v. Exeter*, 37 N. H. 556; *Savings Bank v. Nashua*, 46 N. H. 389-398, and cases cited; *Kimball v. Milford*, 54 N. H. 406; *Commonwealth v. New York, L. E. & W. R. Co.*, 150 Pa. St. 234; *American Bank v. Mumford*, 4 R. I. 478. In *State v. Sterling*, 20 Md. 502, a law taxing savings banks a certain percentage on all deposits held by them on a certain day was held void because not exempting investments in securities otherwise taxed or not taxable. A savings bank was held not liable for taxes on its securities purchased by the deposits, where the franchise tax of one-fourth of one

per cent. on its deposits had been paid: *Westminster v. Westminster Savings Bank* (Md.), 48 Atl. Rep. 34. When by authority of law city lots are appropriated for a railroad track and assessed as such by the state, they cannot also be assessed as city lots by the local authorities: *Chicago, etc. R. Co. v. Miller*, 72 Ill. 144. But this right of way only includes land actually used for the road itself, not ground used for stations and machine shops: *Chicago, etc. R. Co. v. Paddock*, 75 Ill. 616. See *People v. Ohio, etc. R. Co.*, 96 Ill. 411. When the state lays a specific tax on banks measured by the stock, a bank is not liable upon its capital stock as "taxable property," for to tax it thus would be to tax it on its debts: *Trustees v. Deposit Bank*, 12 Bush 538. Compare *San Francisco v. Spring, etc. Works*, 54 Cal. 571. Where it was contended, in a suit to enjoin taxes assessed by a local assessor, that there had been double taxation, and that there was no evidence to support a finding that the property had not been assessed by the state board, it was held that in the absence of proof that the property had been assessed by the state board, there was no presumption to that effect, and that the taxes assessed by the local assessor would not be enjoined: *Chicago, B. & Q. R. Co. v. Merrick County*, 36 Neb. 176. A tax of a specified sum on family vehicles already taxed by value is invalid as a double tax and as grossly disproportionate: *Livingston v. Paducah*,

and very just rule of construction, and it has been applied in many cases where, at first reading of the law, a double taxation might seem to have been intended.¹

Application of the presumption. A few instances in which this rule of presumption has been applied will show what taxation has been held to be in effect duplicate taxation, and for that reason excluded from the general language made use of in tax laws.

Under a statute in Massachusetts, shares in any incorporated company possessing taxable property were taxable to the owners in the towns of their residence respectively. While this was in force, a manufacturing corporation was assessed under the general law for the taxation of property to its owners, for all its real and personal estate in the town where its business was carried on. It was held that this taxation of shares was by implication to be regarded as standing in the place of a taxation of the personal estate to the corporation itself, since, if both were taxed, it would in effect be duplicate taxation. As to the real estate, however, the conclusion was different. The taxes upon land had always, in that state, been paid exclusively to the town in which it was situated. In all successive valuations made in pursuance of the laws for that purpose, each town had been charged with the value of all the real estate

80 Ky. 656. For a similar ruling as to a tax on bicycles, see *People v. Collins*, 175 Ill. 445. But an ordinance imposing license fees upon vehicles let for hire imposes a tax upon the occupation of the owner merely, and is not liable to the objection that it imposes double taxation, although an *ad valorem* tax is also imposed upon the vehicle: *Covington v. Woods*, 98 Ky. 344.

¹ *Bank of Georgia v. Savannah*, Dudley 130; *Factory Co. v. Gardiner*, 5 Me. 133; *Glass Co. v. Boston*, 4 Met. 181; *Savings Bank v. Worcester*, 10 Cush. 128; *American Bank v. Mumford*, 4 R. I. 478, 482; *Savings Bank v. Gardiner*, 4 R. I. 484; *Smith v. Exeter*, 37 N. H. 566; *Toll Bridge Co. v. Osborn*, 35 Conn. 7; *State v. Han-*

nibal, etc. R. Co., 37 Mo. 265. In the case of *Kimball v. Milford*, 54 N. H. 406, stock in a foreign corporation which by its charter pays a specific tax in lieu of all others was held not taxable under the New Hampshire statutes. As to a law for taxing the gains of a corporation, and the dividends declared or earned, see *Board of Revenue v. Gas Light Co.*, 64 Ala. 269. And further for the general rule, *Coatesville Gas Co. v. Chester County*, 97 Pa. St. 476; *Rice County v. National Bank*, 23 Minn. 280. The Maryland statute providing for the taxation of distilled spirits was held not to require double taxation of the same spirits in any one year: *Monticello Distilling Co. v. Baltimore*, 90 Md. 416.

within it, in the apportionment of the tax among the several towns. It would therefore be unjust if the real estate which was included in estimating the amount of taxes charged on a town, by being assessed as represented by the shares of stockholders elsewhere, should be exempted from contributing to the discharge of such taxes. The policy of all the tax laws had been that the land should contribute to the local taxes irrespective of the residence of the owner, and the implication that this was intended in the case of corporate real estate was so strong that the counteracting presumption against an intent to impose duplicate taxation must yield to it.¹

So in Georgia it has been held, under a city charter empowering the corporation in general terms to levy taxes on real and personal estate, that while the city might tax the stockholders of a bank upon their shares, this taxation would by implication exclude the taxation of the bank on its capital stock.² In Alabama the fact that the capital of a bank is largely represented by land does not render a statute objectionable as providing for double taxation.³ In Pennsylvania it has been decided that a tax on the discount business of a bank is in a degree a tax upon the capital of the bank. Where, therefore, it was provided by its charter that the bank should not be subject to taxation on its capital stock, for any other

¹ *Salem Iron Factory v. Danvers*, 10 Mass. 514. This case was followed, after some change in the statute, in *Amesbury Woolen, etc. Co. v. Amesbury*, 17 Mass. 461. And see as to the real estate, *Amesbury Nail Factory Co. v. Weed*, 17 Mass. 53; *Tremont Bank v. Boston*, 1 Cush. 142; *Boston Water Power Co. v. Boston*, 9 Met. 199. In *Middlesex R. Co. v. Charleston*, 8 Allen 330, where shareholders in a street railway were taxable on their shares in the towns where they resided, it was held not competent to tax the personal property of the corporation used in and necessary for the prosecution of its business. "The value of the personal property owned by the corporation is included as a subject of taxation in the value of the shares; as in the case of banks,

insurance companies, manufacturing corporations, and other railroads:" *Hoar*, J., p. 333. Compare *The Tax Cases*, 12 G. & J. 117.

² *Bank of Georgia v. Savannah*, Dudley 130, citing Massachusetts cases with approval. See *Bank of Cape Fear v. Edwards*, 5 Ired. 516; *Johnson v. Commonwealth*, 7 Dana 338; *State v. Tunis*, 23 N. J. L. 546.

³ *Jefferson County Savings Bank v. Hewett*, 112 Ala. 546. Taxes assessed on real estate owned by a bank were held to be taxes on the surplus and not on the capital stock, and where the shares were taxed a tax on real estate owned by the bank did not constitute double taxation: *Second Ward Savings Bank v. Milwaukee*, 94 Wis. 587.

than state purposes, the tax on its discount business would be inadmissible but for the fact that the charter was granted under and subject to a provision in the state constitution which made it at all times subject to legislative alteration or repeal.¹

So in Massachusetts it is held that a bank which pays a specific tax on its capital stock is not taxable on collaterals deposited with it as security for loans.² Further illustrations will appear in cases cited in the margin.³

On the other hand a tax on the market value of the capital stock of a corporation, over and above the value of its real and personal property, is not duplicate taxation by reason of the tangible property being also taxed, but is a tax upon the franchise.⁴ So a tax on the deposits of savings societies has been held a tax on the franchise and not a tax on property.⁵ And

¹ *Iron City Bank v. Pittsburg*, 37 Pa. St. 340.

² *Waltham Bank v. Waltham*, 10 Met. 334; *Tremont Bank v. Boston*, 1 Cush. 142; and see *Salem Iron Factory v. Danvers*, 10 Mass. 514.

³ *State v. Branin*, 23 N. J. L. 484, which cites *Johnson v. Commonwealth*, 7 Dana 338; *Tax Cases*, 12 G. & J. 117; *Gordon's Executors v. Baltimore*, 5 Gill 231; *Smith v. Burley*, 9 N. H. 423. See, also, *State v. Bentley*, 23 N. J. L. 532; *State v. Powers*, 24 N. J. L. 400; *Bank of Cape Fear v. Edwards*, 5 Ired. 516; *Wilmington, etc. R. Co. v. Reid*, 13 Wall. 264.

⁴ So held in *Hamilton Co. v. Massachusetts*, 6 Wall. 632, in reliance upon a settled course of decisions in Massachusetts. See *Commonwealth v. Hamilton Manuf. Co.*, 12 Allen 298, 306; *Porter v. Rockford, etc. R. Co.*, 76 Ill. 561; *Chicago, etc. R. Co. v. Siders*, 88 Ill. 320; *Chicago, etc. R. Co. v. Raymond*, 97 Ill. 212; *Lewiston Water & P. Co. v. Asotin County (Wash.)*, 64 Pac. Rep. 544. Shares of stock in a foreign corporation may be taxed in full to resident owners irrespective of the taxation of its property where it is located: *Trust Co. v. Parks*, 80 Ill. 170; *Greanleaf v. Board of Review*, 184 Ill. 226; *Whit-*

aker v. Brooks, 90 Ky. 68; *Appeal Tax Court v. Gill*, 50 Md. 377; *Great Barrington v. Commissioners*, 16 Pick. 572; *Dwight v. Boston*, 12 Allen 316; *Bacon v. Board of Tax Com'rs (Mich.)*, 85 N. W. Rep. 307; *McKeen v. Northampton County*, 49 Pa. St. 519; *Dyer v. Osborne*, 11 R. I. 321; *Jennings v. Commonwealth*, 98 Va. 80. A statute providing that the stock of a railroad company shall be listed and taxed in the several counties in such proportion as the main track used in each county bears to the whole length of track operated by such company does not import into rolling stock taxable in the state values belonging to property in another state, so as to constitute double taxation: *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Indianapolis & V. R. Co. v. Backus*, 133 Ind. 609.

⁵ *Society for Savings v. Coite*, 6 Wall. 594; *Provident Institution v. Massachusetts*, 6 Wall. 611. See *Portland Bank v. Apthorp*, 12 Mass. 252; *People v. Savings Bank*, 5 Allen 428; *People v. Supervisors*, 4 Hill 20; *Farmers' L. & T. Co. v. New York*, 7 Hill 261; *Bank of Utica v. Utica*, 4 Paige 399; *Coite v. Society*, 32 Conn. 173; *Coite v. Conn. Mut. Life Ins. Co.*, 36

where by statute "no income shall be taxed which is derived from property subject to taxation," a merchant may nevertheless be taxed on his income under the general law taxing income from a profession, trade, or employment, this income being the "net result of many combined influences: the use of the capital invested; the personal labor and services; . . . the skill and ability with which they lay in or from time to time renew their stock; the carefulness and good judgment with which they sell and give credit; and the foresight and address with which they hold themselves prepared for the fluctuations and contingencies affecting the general commerce and business of the country. To express it in a more summary and comprehensive form, it is the creation of capital, industry, and skill."¹ So it is competent to tax brokers upon their annual receipts, notwithstanding they pay a license tax for the privilege of carrying on that business.² So a tax upon the amount of the nominal capital of a bank, without regard to loss or depreciation, has been likened to "one annexed to the franchise as a royalty for the grant."³ A tax on the interest paid by a corporation on its indebtedness, though collected from the corporation, is still a tax on the creditor; the corporation being only made use of as a convenient means of collecting the tax.⁴ So a tax on the shares of stockholders in a corporation is a different thing from a tax on the corporation itself or its stock,

Conn. 512; *Illinois Mut. Ins. Co. v. Peoria*, 29 Ill. 180; *Oliver v. Washington Mills*, 11 Allen 263; *Commonwealth v. Carey Improving Co.*, 98 Mass. 19; *Attorney-General v. Mining Co.*, 99 Mass. 148. As to what is a franchise tax, see *post*, ch. XII.

¹ *Wilcox v. Commissioners of Middlesex*, 103 Mass. 544, per *Ames*, J.

² *Drexel v. Commonwealth*, 46 Pa. St. 31.

³ *Bank of Commerce v. New York*, 2 Black 620, 629, per *Nelson*, J.

⁴ *Haight v. Railroad Co.*, 6 Wall. 15; *Railroad Co. v. Jackson*, 7 Wall. 262; *United States v. Railroad Co.*, 17 Wall. 322. In the second of these cases a state tax on the interest on bonds issued by a railroad company and secured by mortgage on a line

lying partly in another state was held to be void, on the ground that to the extent of the road out of the state she was "taxing property and interests beyond her jurisdiction." It is to be said of this case that the plaintiff was a non-resident, and for that reason not taxable in the state on his bonds, under the subsequent decision of the same court: *State Tax on Foreign Held Bonds*, 15 Wall. 300, 323. Railroad bonds are taxable to the owners notwithstanding the company pays a tax on "the market value of their stock and their funded and floating debt, in lieu of all other taxes on railroad property and franchises." *Bridgeport v. Bishop*, 33 Conn. 187.

and may be laid irrespective of any taxation of the corporation when no contract relations forbid.¹ So it has been held that a corporation which was required to pay a bonus on its capital in lieu of a tax on dividends might nevertheless be taxed on

¹ *Van Allen v. Assessors*, 3 Wall. 573, 584; *People v. Commissioners*, 4 Wall. 244; *State Tax on Foreign Held Bonds*, 15 Wall. 302, 323; *Farrington v. Tennessee*, 95 U. S. 687; *Bank of Commerce v. Tennessee*, 161 U. S. 134; *Atlanta N. B. & L. Assoc. v. Stewart*, 109 Ga. 80; *People v. Bradley*, 39 Ill. 130, 141; *Republic L. Ins. Co. v. Pollak*, 75 Ill. 292; *Danville B. & T. Co. v. Parks*, 80 Ill. 170; *Conwell v. Connersville*, 15 Ind. 150; *Cook v. Burlington*, 59 Iowa 251; *New Orleans v. Canal, etc. Co.*, 32 La. An. 157; *Cumberland Marine R. v. Portland*, 37 Me. 444; *Tremont Bank v. Boston*, 1 Cush. 142; *State v. Thomas*, 26 N. J. L. 181; *Oswego Starch Factory v. Dolloway*, 21 N. Y. 449; *Lee v. Sturges*, 46 Ohio St. 153; *Lycoming County v. Gamble*, 47 Pa. St. 106; *Whitesell v. Northampton County*, 49 Pa. St. 526; *State v. Petway*, 2 Jones Eq. 396; *Union Bank v. State*, 9 Yerg. 490; *Nashville Gas Light Co. v. Nashville*, 8 Lea 406; *Emsly v. Memphis*, 6 Baxt. 553; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406; *State v. Bank of Commerce*, 95 Tenn. 221; *State v. Hernando Ins. Co.*, 97 Tenn. 85; *Salt Lake City Nat. Bank v. Golding*, 2 Utah 1; *Jennings v. Commonwealth*, 98 Va. 80. See *Belo v. Forsyth County*, 82 N. C. 415. "In corporations four elements of taxable value are sometimes found: (1) franchises; (2) capital stock in the hands of the corporation; (3) corporate property; and (4) shares of stock in the hands of the individual stockholders. Each of these is, under some circumstances, an appropriate subject of taxation; and it is no doubt within the power of a state, when not restricted by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation:" *Tennessee v. Whitworth*, 117 U. S. 129, 136, cited in *New Orleans v. Houston*, 119 U. S. 265, 277. Under recent legislation in Virginia it is held that the taxation of shares of an incorporated company in the hands of the stockholders does not prohibit the taxation of the capital of the company, the latter not being taxed otherwise: *Commonwealth v. Charlottesville P. B. & L. Co.*, 90 Va. 790. To tax a bank on its property and also the stockholders on their shares was in *Gordon's Executors v. Baltimore*, 5 Gill 231, and *Baltimore v. Baltimore & O. R. Co.*, 6 Gill 288, regarded as duplicate taxation not allowable under Maryland laws. As everything which gives value to bank shares is, under the Texas statute, taxable to the bank, the shares cannot be taxed to their owners, even though the bank fails to render its property for taxation: *Gillespie v. Gaston*, 67 Tex. 599. So in Kentucky, under the act of 1884, stockholders are not liable to taxation on their stock although the corporation has not reported and paid taxes on its property: *Whitaker v. Brooks*, 90 Ky. 68. When a tax has been paid by a corporation on its capital stock, the same stock cannot in Pennsylvania again be charged with taxes in the hands of separate owners of the shares: *Commonwealth v. Lehigh C. & N. Co.*, 162 Pa. St. 603. So, a corporation which holds all the stock of another company that has been taxed on the value of such stock cannot be assessed with the sum already paid by

its "net earnings or income;" this not being the same thing as dividends.¹ So in case of a corporation which pays a specific tax, an exemption "from any other or further tax or imposition" will not prevent any real estate it may own, and which is not needed for corporate purposes, from being taxed. The power granted to a corporation to hold land is limited to the purposes for which the power was conferred. This is the general rule, and governs in the construction of the exempting clause. The tax levied may so far operate as a double tax, the property being already taxed in the shape of capital; but if the company choose to invest capital in property not necessary for their business, such as the legislature did not contemplate in their grant, they cannot complain that it is twice taxed. Double taxation is not unconstitutional."²

that company: *Commonwealth v. Fall Brook Coal Co.*, 156 Pa. St. 488. In Rhode Island it is held that a separate tax upon corporate personality, where resident stockholders are assessed individually upon ownership of stock, is not collectible: *Newport Reading Room's Petition*, 21 R. L. 410. See, further, on this subject, *Railroad Co. v. Gaines*, 97 U. S. 697; *Pennsylvania Co. v. Commonwealth (Pa.)*, 15 Atl. Rep. 456; *American Bank v. Mumford*, 4 R. L. 478; *Providence Inst. v. Gardiner*, 4 R. L. 484.

¹ *Jones, etc., Manuf. Co. v. Commonwealth*, 69 Pa. St. 137. That shares of stock divided among stockholders as profits are dividends, see *Lehigh Crane Iron Co. v. Commonwealth*, 55 Pa. St. 548; *State v. Farmers' Bank*, 11 Ohio 94; *Sun Mut. Ins. Co. v. New York*, 8 N. Y. 241, 250. See *Bailey v. Railroad Co.*, 22 Wall. 604.

² *Potts, J.*, in *State v. Newark*, 25 N. J. L. 315, 317, citing *Tatem v. Wright*, 23 N. J. L. 429. Double taxation is not necessarily illegal: *People v. Sanilac Supervisors*, 71 Mich. 16. While the general policy of the law is to avoid duplicate taxation, yet where the meaning of the stat-

utes is clear the court cannot pronounce them invalid because they admit of such taxation: *Toll-bridge Co. v. Osborn*, 35 Conn. 7. It is not possible to avoid what in its final outcome is duplicate taxation, and, therefore, a tax cannot be avoided by a showing that such is the result: *St. Louis L. Ins. Co. v. Assessors*, 56 Mo. 503. Double taxation seems within the taxing power unless prohibited by the constitution: *Ohio Valley B. & L. Assoc. v. County Court*, 42 W. Va. 818. Double taxation is not forbidden in the state of Washington: *Pacific Nat. Bank v. Pierce County*, 20 Wash. 675. Double taxation, in that property is assessed for special benefits and subject to general assessment for costs of improvement above the special assessment, is not illegal: *In re Beechwood Av.*, 194 Pa. St. 86. The declaration of rights requires equality in taxation, and in so far as double taxation destroys that equality it is invalid, but not otherwise: *United States E. P. & L. Co. v. State*, 79 Md. 63. The constitution of Ohio prohibits double taxation of banks, bankers, and stockholders: *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266.

It has often been decided that a tax on the franchise of a corporation, and also on its capital or property, was not duplicate taxation.¹ The franchise, nevertheless, has a property value, and, as a question of construction, it may sometimes be necessary to hold that an exemption of the property of a corporation from taxation is an exemption of the franchise also. It has been so held in the case of a railroad corporation whose charter provided that "the property of said company and the shares therein shall be exempt from any public charge or tax whatever."² The intent in such a case, when reasonably ap-

Duplicate or triplicate taxation, at the same time, for the same purpose, and upon the same property, is void in California by whatever standard levied, as being neither equal nor uniform: *People v. Parks*, 58 Cal. 224. Double taxation of the same property is unconstitutional and void in Virginia: *Fulkerson v. Treasurer*, 95 Va. 1.

¹ *Carbon Iron Co. v. Carbon County*, 39 Pa. St. 251; *Lackawanna Iron Co. v. Luzerne County*, 42 Pa. St. 424; *Tremont Bank v. Boston*, 1 Cush. 142; *Commonwealth v. Lowell Gas Light Co.*, 12 Allen 75; *Commonwealth v. Hamilton Manuf. Co.*, 12 Allen 298; *Wilmington, etc. R. Co. v. Reid*, 64 N. C. 226; *Commonwealth v. New York, L. E. & W. R. Co.*, 150 Pa. St. 234; *Mason v. Lancaster*, 4 Bush 406; *Supervisors v. Kelly*, 68 Miss. 40; *Monroe Savings Bank v. Rochester*, 37 N. Y. 365; *Bank of Commerce v. New York*, 2 Black 620, 629; *Minot v. Railroad Co.*, 18 Wall. 206. In *Commonwealth v. N. E. Slate & Tile Co.*, 13 Allen 391, 393, *Wells, J.*, says: "The fact that the defendant corporation held property which was the subject of taxation in other ways does not render this tax upon its franchise illegal. In the practical operation of the powers of taxation, which are given in several forms, it is inevitable that double taxation shall occur in some cases. The legislature may relieve against

it by allowing deductions if it sees fit to do so; but the court can only apply the law as it stands." A charter provision that a bank shall pay to the state a tax "in lieu of all other taxes" does not exempt it from a privilege tax imposed by the city wherein it is located: *Union & P. Bank v. Memphis*, 101 Tenn. 154. If the capital of a bank is invested in non-taxable securities, the franchise still is taxable: *Monroe Savings Bank v. Rochester*, 37 N. Y. 365. And see *Society v. Coite*, 6 Wall. 594; *Provident Inst. v. Massachusetts*, 6 Wall. 611; *Hamilton Co. v. Massachusetts*, 6 Wall. 632. It is not double taxation to impose a franchise tax on the gross receipts of a corporation, and also to tax the stockholders on their shares: *United States Electric P. & L. Co. v. State*, 79 Md. 63. Where a railroad company has leased its line, the value of its franchise, otherwise taxable, should not be included in the assessment for taxation of the lessee's personal property: *People v. Barker*, 152 N. Y. 417. A tax of three per cent. on the net earnings of private bankers is not a property, but rather a license tax, and the additional imposition of a percentage tax on their judgments and mortgages is not double taxation: *Commonwealth v. McKean County (Pa.)*, 49 Atl. Rep. 982.

² *Wilmington R. Co. v. Reid*, 13 Wall. 264; *Raleigh, etc. R. Co. v.*

parent on the face of the legislation, must control. It has been held that a tax on the capital stock measured by dividends was not a tax on dividends, and the corporation subject to it was therefore liable to a tax on net earnings under a statute which provides that corporations not paying a tax on dividends shall be taxed on net earnings.¹ A tax on "the capital stock actually paid in or secured to be paid in" is a tax on the capital at its nominal amount, and is not to be increased or diminished by accumulations or losses.² These cases will perhaps illustrate sufficiently the power of the legislature to impose taxation that in its result duplicates the burden, as well as the force of the presumption that the legislature, in its desire to lay all burdens of government justly, has never intended duplicate taxation unless plain language expressive of that intent has been employed.

So far, the subject has been considered as the questions of equality and justice in taxation arise on the tax laws themselves. Of the steps necessary or proper to be taken in order to secure equality under such laws, it will be necessary to speak further on.

Commuting taxes. Tax laws sometimes provide for commutation; that is to say, for the substitution of something else for the tax that is levied.³ Thus, road taxes are sometimes levied in labor, with permission to commute by the payment of what is deemed an equivalent in money. There is no doubt

Reid, 13 Wall. 269; *State v. Austin & U. W. R. Co. (Tex.)*, 62 S. W. Rep. 1050. In New Jersey, where a corporation by its charter was to pay a certain tax on its capital stock paid in, "no further or other tax or impost" to "be levied or assessed upon said company," this was held to exempt not the franchises merely, but the property also: *State v. Berry*, 17 N. J. L. 80; *Camden & A. R. Co. v. Commissioners*, 18 N. J. L. 71. See *Camden & A. R. Co. v. Hillegas*, 18 N. J. L. 11; *Nichols v. New Haven, etc. Co.*, 48 Conn. 103. So it has been held that a tax on the gross income of a corporation cannot be laid when the stock is exempt: *State v. Balti-*

more, etc. R. Co., 48 Md. 49; *State v. Hood*, 15 Rich. 177.

¹ *Phoenix Iron Co. v. Commonwealth*, 50 Pa. St. 104. A tax on capital invested in shipping is not duplicate taxation as applied to vessels upon which harbor-master's fees have been paid: *State v. Charleston*, 4 Rich. 286.

² *Farmers' L. & T. Co. v. New York*, 7 Hill 261, citing *Bank v. Utica*, 4 Paige 399; *People v. Supervisors*, 4 Hill 20. See *Gordon v. New Brunswick Bank*, 6 N. J. L. 100; *Rudderow v. State*, 31 N. J. L. 512.

³ *Hayward v. People*, 145 Ill. 55, citing *Baltimore & O. R. Co. v. Maryland*, 21 Wall. 456.

of the right to pass laws which allow of such commutations,¹ provided they are general and impartial; but if they offer the privilege of commutation to certain classes of the people only, they will be held void.² Such commutations are competent when not forbidden by the constitution, and they are not supposed to cause inequality or injustice.³ Many of the special exemptions which have been referred to were in the nature of commutations, being made in consideration of something received or to be received by the state which was supposed to be the equivalent of regular taxation.⁴ If the power to commute exists, the legislature is the sole judge of the propriety of the exercise thereof, and, its acts not being subject to revision

¹ *Daughdrill v. Insurance Co.*, 31 Ala. 91.

² *Cooper v. Ash*, 76 Ill. 11. In this case it is said: "Even if it were conceded, which it is not, that the legislature may commute county or local taxes for some other consideration in lieu thereof, such commutation should operate with fairness and uniformity upon the stockholders of the corporation with which it is made."

³ *Gardner v. State*, 21 N. J. L. 557; *Clarke v. Henshaw*, 30 Md. 146; *Neary v. Philadelphia, W. & B. R. Co.*, 7 Houst. (Del.) 419; *Louisiana Lottery Co. v. New Orleans*, 24 La. An. 86; *Daughdrill v. Insurance Co.*, 31 Ala. 91. Clauses of state constitution which provide that taxes shall be uniform with respect to persons and property do not forbid the legislature's commuting with individuals or corporate bodies the burdens of general or specific taxes; *Chicago v. Sheldon*, 9 Wall. 50; *Parmelle v. Chicago*, 60 Ill. 267. In some cases it was held that the power to commute is forbidden in denying the power to exempt: *New Orleans v. Insurance Co.*, 23 La. An. 756; *New Orleans v. St. Charles, etc. Co.*, 28 La. An. 498; *New Orleans v. Sugar Co.*, 35 La. An. 548; *Zanesville v.*

Richards, 5 Ohio St. 590; *Austin v. Gas Light Co.*, 69 Tex. 180. See *Ide v. Finneran*, 29 Kan. 569; *Fields v. Commissioners*, 36 Ohio St. 476; *McHenry v. Alford*, 168 U. S. 651; *Northern Pac. R. Co. v. Barnes*, 2 N. D. 310. A city forbidden by its charter to compromise taxes cannot ratify an illegal compromise made by the county court: *Kansas v. Hannibal & St. J. R. Co.*, 81 Mo. 285.

⁴ See *ante*, p. 110; also *Baltimore & O. R. Co. v. Maryland*, 21 Wall. 456; *Daughdrill v. Insurance Co.*, 31 Ala. 91; *Johnston v. Macon*, 62 Ga. 645; *Illinois Central R. Co. v. McLean County*, 17 Ill. 291; *Hunsaker v. Wright*, 30 Ill. 146; *Board v. Campbell*, 42 Ill. 492; *Howard v. People*, 145 Ill. 55; *Waters v. State*, 1 Gill 302; *Attorney v. Common Council*, 113 Mich. 398; *Milwaukee, etc. R. Co. v. Crawford County*, 29 Wis. 116. The right to pay a tax on gross earnings in lieu of all other city taxes is not one of the "restrictions, limitations, and conditions" prescribed in a statute authorizing such tax, and a company to which such restrictions, etc., are made applicable by an amendment of its charter is subject to other taxes: *Dauphin, etc. R. Co. v. Kennerly*, 74 Ala. 583.

by the co-ordinate powers of the state, it must clearly appear that the commutation was intended.¹

Diversity of taxation in different districts. Reference has been made to cases which recognize the right of the state to establish different rules of taxation for the local levies in different districts, even when, by the state constitution, uniformity and equality in taxation are required. Such different rules are made in view of the universal custom to consult the circumstances of different districts, and, when deemed important, the wishes of their people regarding the taxes to be levied therein as district taxes; and all presumptions are against any purpose to set aside that custom. Local taxes may be levied on a different system in the different municipal districts, and for different purposes; not only when they are laid to supply mere local works and conveniences, but also when they are for purposes — like the highways, for instance — which, though paid for locally, are for the benefit of the whole state and the use of all its people.²

Monopolies. It seems scarcely necessary to say that the rule of equality in taxation will forbid the power being employed for the purpose of building up monopolies. That it is capable of being so employed needs no demonstration; and that it sometimes has been so employed, especially in the arrangement of customs duties, is unquestionable; always, of course, under the pretense of an apportionment of taxes for the public good. Taxation of business and the license taxes are peculiarly liable to abuse in this direction,³ especially if they undertake to limit the number to whom permits shall be granted; and if the state can exempt the large manufacturer from taxation while taxing his feeble competitor, as has been done in one state at least, it may take in this way a long stride in the

¹ *Hayward v. People*, 145 Ill. 55.

² See, in general, *People v. Central Pac. R. Co.*, 43 Cal. 398; *Bright v. McCullough*, 27 Ind. 223; *Commissioners v. Alleghany County*, 20 Md. 449, 457; *Merrick v. Amherst*, 12 Allen 500; *Boyd v. Wiggins*, 7 Okl. 85. Two laws fixing different rates of taxation cannot both obtain at the same time in the same city: *Holzhauser v. Newport*, 94 Ky. 396.

³ See Judge Nott's article on "Monopolies" in the *International Review*, vol. 1, p. 370. Charles I. was able to exact large sums of money by enforcing a royal proclamation forbidding the erection of buildings in extension of London and granting special permits on the payment of large sums for the privilege: *Green's England*, ch. 8, sec. 5.

direction of establishing a monopoly. The spirit of a free constitution, if not its letter, forbids such legislation, and sound public policy forbids it also. One reason why taxation for private purposes is inadmissible is, that its tendency is to the building up of monopolies at the expense of the public who would suffer from them;¹ it begins in a pretense for the public good, and it ends in crippling the general industry while it excites the general discontent.²

Permanence in legislation. It should be added that, in order that tax laws may not be oppressive, they should not be subject to frequent changes. Tariff laws frequently changed become a serious impediment to the business of the country, from the impossibility on the part of business men to calculate upon the future. To all the other contingencies of business is added this one, which is, perhaps, greatest of all: that the federal legislature may so change the customs laws as to detract considerably from the market value of merchandise on hand, or increase largely the cost of something employed in manufacture, or in some other way to change greatly the outlook for any particular trade. The excise laws are seldom changed without serious injury to individuals; and if others, perhaps, make fortunes by the change, the possibility of such prosperity leads to speculations in prospective changes, and even to endeavors by indirect means to procure alterations for speculative purposes. Changes in other tax laws are not so injurious, but they are always liable to be oppressive in individual cases, and for this reason are not to be made except to cure positive evils. Mere inconveniences, to which the people have become accustomed, or even impolitic or unequal taxation to which trade and business have adjusted themselves, are usually less harmful than considerable changes in the law made with a view to their correction. This is a consideration of policy, with which the courts have no concern, but it seems sufficiently important to justify mention in this connection.

¹ See *Philadelphia Assoc. v. Wood*, 39 Pa. St. 73, 82, per *Lowrie*, Ch. J.

² The right of a city to levy a tax for the construction of a patented pavement has been denied in some states, on the express ground that the patent was a monopoly, and there could be no competition in

bidding for the contract to construct it: *Nicolson Pavement Co. v. Fay*, 35 Cal. 695; *Same v. Painter*, 35 Cal. 699; *Dean v. Charlton*, 23 Wis. 590; *Burgess v. Jefferson*, 21 La. An. 143. *Contra*, *Hobart v. Detroit*, 17 Mich. 246; *In re Eager*, 46 N. Y. 100; *In re Dugro*, 50 N. Y. 513.

CHAPTER VII.

THE APPORTIONMENT OF TAXES.

When the state has need of the property of citizens for its sovereign purposes, it may lawfully appropriate it against the will of the owner either under the power to tax or the right of eminent domain. There is a difference in the two cases which is vital. When property is appropriated under the right of eminent domain, a particular item or parcel is taken, because for public purposes there is special need of it, and the state takes it under proceedings which amount, so far as the owner is concerned, to a forced sale. But taxation is based upon the idea of calling upon the people for equal and proportional contributions to the public wants, that the burdens of government may fall ratably upon all who in justice should bear them.¹ Apportionment of the burden is therefore a necessary element in all taxation.²

Two things are involved in apportionment. The first is the selection of the subjects of taxation. No state undertakes to tax everything which comes within the reach of the taxing power; and it would be idle as well as mischievous in the last degree if it were to attempt it. For while the state may tax all persons as such, and all property as such, it may also tax all occupations, all amusements, and the very enjoyment of customary rights and privileges, until the exactions would be oppressive from their very number when not otherwise onerous, and a free people would not endure them. The more

¹ *People v. Brooklyn*, 4 N. Y. 419; *Booth v. Woodbury*, 32 Conn. 118; *Woodbridge v. Detroit*, 8 Mich. 274; *Ryerson v. Utley*, 16 Mich. 269; *Macon v. Patty*, 57 Miss. 378. The constitutional provision prohibiting the damaging or taking of private property for public use without just compensation is not a limitation upon the taxing power of the state, but upon the power of eminent domain: *Kimball v. Grantsville City*, 19 Utah 368. And see *Lexington v. McQuillan's Heirs*, 9 Dana 513, 516; *Martin v. Dix*, 52 Miss. 53.

² *People v. Salem T'p Board*, 20 Mich. 452; *Bay City v. State Treasurer*, 23 Mich. 499; *Callam v. Saginaw*, 50 Mich. 7; *Tide Water Co. v. Coster*, 18 N. J. Eq. 518; *Henry v. Chester*, 15 Vt. 460.

reasonable and politic course is to select for taxation as few subjects as possible, consistent with a fair distribution of the burden.

The other requisite in apportionment is the laying down of a rule by which to measure the contribution which each of the subjects selected for taxation shall make. This rule only the legislative power of the state is competent to prescribe, and apportionment, therefore, is always an act of legislation.¹ "The power of taxing and the power of apportioning taxation are identical and inseparable. Taxes cannot be laid without apportionment, and the power of apportionment is, therefore, unlimited, unless it be restrained as a part of the power of taxation."²

The methods of apportionment are numerous and dissimilar, but most taxes may be classified under the three heads of specific taxes, *ad valorem* taxes, and taxes apportioned by special benefits.

Specific taxes. Under this head may be classed those which impose a specific sum by the head or number, or by some standard of weight or measurement, and which require no assessment beyond a listing and classification of the subjects to be taxed. License taxes and other taxes on business or occupations, stamp taxes, taxes on franchises and privileges, are usually specific, as are also other excise and customs taxes.³

¹ *Walston v. Nevin*, 128 U. S. 578; *Simpson v. Kansas City*, 46 Kan. 438; *Williams v. Detroit*, 2 Mich. 560; *Woodbridge v. Detroit*, 8 Mich. 274; *Youngblood v. Sexton*, 32 Mich. 406; *In re Flower*, 55 Hun 158; *Scoville v. Cleveland*, 1 Ohio St. 126. The legislature may apportion for taxation among several towns funds of a charity although one township was the *situs* of all such funds: *Northampton v. Hampshire County Com'rs*, 45 Mass. 108.

² *Ruggles, J.*, in *People v. Brooklyn*, 4 N. Y. 419, 426-7. See *Glasgow v. Rouse*, 43 Mo. 479, 489; *Butler's Appeal*, 73 Pa. St. 448. In every act providing for a local improvement a

method of apportioning the cost must be provided: *Simpson v. Kansas City*, 46 Kan. 438. In Massachusetts it has been held that the omission to prescribe a fixed rule for the assessment of the cost of a sewerage system with respect to the several localities to be drained does not contravene the constitutional power vested in the legislature: *Kingman, Petitioner*, 153 Mass. 566.

³ The tax on inheritances provided by the Michigan statute of 1899 is a specific and not an *ad valorem* tax, although it is based on the value of the property inherited: *Union Trust Co. v. Wayne Probate Judge*, 125 Mich. 487. A statute providing that

As regards all such taxes, the law by which they are laid is of itself a complete apportionment. Ministerial officers have nothing to do but to list the subjects of taxation; classify them where that is necessary; ascertain the number, weight, measurement, etc., when taxation depends upon it, and collect the sum which the law has definitely fixed.¹ If the taxes are stamp or license taxes, even the listing may not be required, but the individual who is to pay them will purchase his stamp or his license, and thus make voluntary payment, as he may have occasion.

Ad valorem taxes. A large proportion of the duties on imports are of this description, and so, sometimes, are many of the taxes which make up the internal revenue.² The statute laying them prescribes the rule, but requires the action of appraisers in apportioning them between individuals. By far the larger proportion of all state taxation is also upon property by a valuation, and effect can only be given to it by means of assessors, who value the property and apportion the tax by their estimate.

Taxes apportioned by benefits. As between *districts*, where an object for which taxes are to be levied pertains to two or more, the legislature sometimes makes the apportionment by

certain officers shall assess telegraph and telephone lines at their true cash value, and levy upon the assessment a tax at a rate which shall equal the average rate of taxes, general, municipal, and local, levied throughout the state during the previous year, does not provide a specific tax: *Pingree v. Auditor-General*, 120 Mich. 95. A statute providing for the collection of annual fees from public-school teachers, which fees are to be used to defray the expenses of teachers' institutes, does not provide for specific state taxes: *Hammond v. Muskegon School Board*, 109 Mich. 676.

¹ *Adler v. Whitbeck*, 44 Ohio St. 539.

² A statute requiring every merchant to file a statement of the

greatest amount of merchandise on hand between given dates, and the amount of such statement, and of each kind of taxes levied thereon, to be entered by the county clerk in a "Merchants' Tax-Book," was held to provide for property, not occupation taxes: *State v. Tracy*, 94 Mo. 217. Tax of a certain per cent. on railway cars held to be a tax on property: *State v. Stephens*, 146 Mo. 662. A tax of a certain sum imposed on each share of a railroad company's stock was considered to be not a property tax, but a price charged under the charter contract for the franchise, and to be collectible from the company, and not from the stockholders: *State v. Seaboard & R. Co.*, 52 Fed. Rep. 450.

its own action directly, with reference to the supposed interest of each in such object, or to the benefit each is likely to derive therefrom.¹ It may also provide for the apportionment by commissioners appointed for the purpose. This often becomes necessary in the case of roads and bridges lying partly in two or more districts.²

The case of the division of counties and towns affords many opportunities for state apportionment. If one municipality is set off from another, the old one, as has been seen, unless it is otherwise provided by statute, will retain the public property and remain liable for the corporate debts.³ It will also retain the right to proceed in the collection of the taxes previously voted, and they will belong to it, though collected in part from the territory now set off.⁴ And this will be the case even as to a special tax levied for a particular local work, the whole benefit of which will be received by the old municipality.⁵ The

¹See *Salem Turnpike v. Essex County*, 100 Mass. 282; *Shaw v. Dennis*, 10 Ill. 405; *Supervisors v. People*, 110 Ill. 511.

²See *ante*, p. 252. A state requiring state taxes to be levied for five years on the basis of the last equalization does not require an old county from which a new one has been set off to bear the whole burden of state tax as before the division until the next equalization. The rule of apportionment indicated: *Ontonagon Supervisors v. Gogebic Supervisors*, 74 Mich. 721. See *Auditor-General v. Menominee Supervisors*, 89 Mich. 552.

³*Devor v. McClintock*, 9 W. & S. 80; *Waldron v. Lee*, 5 Pick. 323; *Harman v. New Marlborough*, 9 Cush. 525; *Moss v. Shear*, 25 Cal. 38; *Morgan County v. Hendricks County*, 32 Ind. 234. See *Alvis v. Whitney*, 48 Ind. 83. Where a county had lawfully issued its bonds in aid of a railroad, and part of its territory had been taken to form other counties by statutes which provided that the citizens and property within the old limits should remain liable for the

payment of those bonds "as though this act had never been passed," held, that an act which authorized the court of the old county to compromise the bonds and to issue new obligations in settlement, and to levy and collect taxes upon all the territory, was constitutional: *Sinton v. Carter County*, 23 Fed. Rep. 535. Where a new county is organized, and by the act authorizing the formation of it the fractions composing it are declared liable for their *pro ratas* of the debts of the old counties from which they were taken, the old county levies the debt upon the fraction, and collects it as if no separation had taken place, and a bill in equity will not lie to compel the new county to levy taxes to pay such *pro rata*: *Blount County v. Loudon County*, 8 Heisk. 854.

⁴*Marion County v. Harvey County*, 26 Kan. 181. See the same case as to a similar question regarding railroad-aid taxation. And compare *Chandler v. Reynolds*, 19 Kan. 249; *Lamb v. Burlington, etc., R. Co.*, 39 Iowa 333.

⁵*Fender v. Neosho Falls*, 22 Kan.

duty of collecting the tax will also be upon the officers of the old municipality.¹ If this rule results in injustice to either the one party or the other, there can be no remedy except in legislation, for neither could have an action against the other based on equities growing out of the division.²

But the legislature has full power to do justice in such cases by making the proper division of property and debts, either directly or through commissioners, or by the aid of the local official boards. And when the apportionment is made, it may compel the necessary taxes to be levied for the payment of any award.³ It is not uncommon to provide for such apportionment by general law.⁴

305; *Blount County v. Loudon County*, 8 Heisk. 854; *Sinton v. Carter County*, 23 Fed. Rep. 535. Where territory is detached from a county and organized into a new county, the treasurer of the old county cannot be required to collect from the taxpayers of the new county taxes levied prior to the division, he having no duty in that regard: *State v. Clevenger*, 27 Neb. 422. As to the collection and disbursement of taxes in unorganized territory, see *Ferris v. Vannier*, 6 Dak. 186; *Roscommon v. Midland*, 39 Mich. 424; *Gay v. Thomas*, 5 Okl. 1; *Dupree v. Stanley County*, 8 S. D. 30; *Llano Cattle Co. v. Faught*, 69 Tex. 402; *Thomas v. Gay*, 169 U. S. 264; *Wagoner v. Evans*, 170 U. S. 588. Cutting off a part of a school district from a township takes away at once all power of the township as to school taxes in the part set off: *Folkerts v. Power*, 42 Mich. 283. But when a new township is erected of territory taken from an old one, it does not become a township as to the assessment, levy, and collection of taxes until it has officers; and until then the old township may continue to tax for its own use: *Commissioners v. Harrisville*, 45 Mich. 442. See *Milwaukee, etc. R. Co. v. Kossuth County*, 41 Iowa 57.

¹ See *Laramie County v. Albany County*, 92 U. S. 307, where it was

held that a county which was largely indebted, and from which another county had been set off, could not, after paying the debt, maintain an action against the new county for contribution.

² *Bristol v. New Chester*, 3 N. H. 524; *Londonderry v. Derry*, 8 N. H. 320; *Willimantic v. Windham*, 14 Conn. 457; *Hartford Bridge Co. v. East Hartford*, 16 Conn. 149, 172; *Granby v. Thurston*, 23 Conn. 416; *Montpelier v. East Montpelier*, 29 Vt. 12, 20; *Milwaukee v. Milwaukee*, 12 Wis. 93; *State v. Rice*, 35 Wis. 178; *Bowdoinham v. Richmond*, 6 Greenl. 112; *Marshall County Court v. Calloway County Court*, 2 Bush 93; *Richland County v. Lawrence County*, 12 Ill. 1; *Borough of Dunmore's Appeal*, 52 Pa. St. 374; *Sedgwick County v. Bunker*, 16 Kan. 498.

³ See *Marathon v. Oregon*, 8 Mich. 372; *Land, etc. Co. v. Oneida County*, 83 Wis. 649. As to what is a "fund due" on the division of a municipality, see *Jasper v. Sheridan*, 47 Iowa 183. On the creation of a new district by the union of two districts, the property of both becomes its property. It has no power to bargain and pay over to the old district the value of its school-house, or to levy a tax for the purpose: *Bacon v. School District*, 97 Mass. 421.

⁴ *Ante*, ch. VI.

In an earlier chapter¹ the constitutional provisions of a number of the states requiring taxation of property to be by value have been mentioned. A later chapter² will cite those judicial decisions which hold that the local levies, commonly known under the head of assessments, though laid under the taxing power, are not taxes in the technical sense of that term as it is commonly employed in state constitutions, and that therefore they may be laid by some standard other than that of value, if the legislature shall so prescribe. The standard more often established than any other is one which seeks to put upon each item of property a tax proportioned to the special benefit it is to receive from the expenditure. There are two general methods of making the apportionment between individuals, the one or the other of which is prescribed as is thought most just and equal. The first is, the appointment of assessors or commissioners empowered to examine the district and apportion the tax according as they shall find that benefits will be received. The second is a determination by the legislature itself that the benefits will be in proportion to value, area, or frontage, and apportionment accordingly. In another place it is shown that either course may be admissible.

General principles of apportionment. The principles by which the legislative apportionment of taxes is to be tested have been so admirably stated in a Kentucky case that we prefer quoting the language of the court in preference to any attempt at stating them in words of our own: "When shall a tax be levied? To what amount? Shall it be a capitation or property tax? Direct or indirect? *Ad valorem* or specific? And what classes of property are the fittest subjects of taxation? are all questions wisely confided by our constitution to the discretion of the legislative department, subject to no other limitation than that of the moral influence of public virtue or responsibility to public opinion. But in some other respects, and so far as the power of taxation may be effectual without being thus limited, it is in our opinion limited by some of the declared ends and principles of the fundamental laws. Among these political ends and principles, *equality*, as far as practicable, and security of property against irresponsible power,

¹ *Post*, ch. XX.

² *Post*, ch. XX.

are eminently conspicuous in our state constitution. An exact equalization of the burdens of taxation is unattainable and utopian. But still there are well defined limits within which the practical equality of the constitution may be preserved, and which, therefore, should be deemed impassable barriers to legislative power. Taxation may not be universal, but it must be general and uniform. Hence, if a capitation tax be laid, none of the class of persons thus taxed can be constitutionally exempt upon any other ground than that of public service; and if a tax be laid on land, no appropriation land within the limits of the state can be constitutionally exempted, unless the owner be entitled to such immunity on the ground of public service. The legislature, in the plenitude of the taxing power, cannot have constitutional authority to exact from one citizen, or even from one county, the entire revenue for the whole commonwealth. Such an exaction, by whatever name the legislature might choose to call it, would not be a tax, but would be, undoubtedly, the taking of private property for public use, and which could not be done constitutionally without the consent of the owner or owners, or without retribution of the value in money.

“The distinction between constitutional taxation and the taking of private property for public use by legislative will may not be definable with perfect precision. But we are clearly of the opinion, that whenever the property of a citizen shall be taken from him by the sovereign will, and appropriated without his consent to the benefit of the public, the exaction should not be considered as a tax unless similar contributions be made by that public itself, or shall be exacted rather by the same public will from such constituent members of the same community generally as own the same kind of property.

“Taxation and representation go together. And representative responsibility is one of the chief conservative principles in our form of government. When taxes are levied, therefore, they must be imposed on the public in whose name and for whose benefit they are required, and to whom those who impose them are responsible. And although there may be a discrimination in the subjects of taxation, still persons in the same class, and property of the same kind, must generally be subjected alike to the same common burden. This alone is

taxation according to our notion of constitutional taxation in Kentucky. And this idea, fortified by the spirit of our constitution, is, in our judgment, confirmed by so much of the twelfth section of the tenth article as declares, 'Nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.'"¹

Apportionment presumptively just. Whatever the rule of apportionment that is thus established by legislation, it is presumptively as just and equal in the opinion of the legislature as the circumstances would permit. It is not, therefore, to be questioned on any grounds of policy, and it cannot be set aside on any showing that in particular cases its operation is unjust.²

¹ *Robertson*, Ch. J., in *Lexington v. McQuillan's Heirs*, 9 Dana 513, 516. See also *Youngblood v. Sexton*, 32 Mich. 406. The sentence quoted from the constitution, however, while it formulates a general idea in constitutional law, has special reference only to the eminent domain: *Martin v. Dix*, 52 Miss. 53.

² As to diversity in apportionment, see *Anderson v. Kerns Draining Co.*, 14 Ind. 199; *Layton v. New Orleans*, 12 La. An. 515; *Wallace v. Shelton*, 14 La. An. 498. Taxation of merchants by sales is not unequal: *Sacramento v. Crocker*, 16 Cal. 119. See ch. XVIII. That the courts can afford no relief for what is merely an unwise apportionment, see *Tallman v. Butler County*, 12 Iowa 531. That a license tax may be apportioned in reference to the size of the town in which the privilege is to be exercised, see *State v. Schlier*, 3 Heisk. 281. A peculiar case of apportionment was that in *Ould v. Richmond*, 23 Grat. 464. The tax was a license tax on lawyers, who were classified in six classes by the finance committee of the common council, and the tax was different in the several classes. The tax was sustained against an objection to its inequality.

The classification seems to have had in view the value of the privilege the license gave, the extent of the business, the income, etc. In *Berney v. The Tax Collector*, 2 Bailey 654, 681, *O'Neill*, J., in speaking of objections which were made to a tax on bank dividends, says: "It may be that the tax on the dividends may operate unequally in that it is virtually a tax on money at interest, which is not generally subjected to taxation. This objection, however, is not addressed to the proper *forum*: it belongs to the legislature, not to the judiciary, to decide on its propriety and force. The legislature may select any property they please, to be taxed. If the tax is to operate generally on every citizen who may own the property declared liable to it, it would be constitutional. If an act purports to exempt one class of citizens, owning property upon which it imposes a tax in the hands of others, it might be a discriminating tax, and unconstitutional." In *Youngblood v. Sexton*, 32 Mich. 406, a tax on business was objected to because the sum levied was uniform and did not discriminate according to the business done; but the court says this is clearly within the power

Apportionment imperative. But the requirement of apportionment is absolutely indispensable in any exercise of the power to tax.¹ There can be no such thing as valid taxation when the burden is laid without rule, either in respect to the subjects of it or to the extent to which each must contribute. In this respect the legislature is as powerless as any subordinate authority, it being impossible there should be taxation that is at once arbitrary and valid.² Whenever, therefore, the

of the legislature, which must determine conclusively whether this method is or is not more just and politic than any other.

¹ *People v. Salem T'p Board*, 20 Mich. 452; *Bay City v. State Treasurer*, 23 Mich. 499; *Callam v. Saginaw*, 50 Mich. 7; *Tide Water Co. v. Coster*, 18 N. J. Eq. 518, per *Beasley*. Ch. J.; *Henry v. Chester*, 15 Vt. 460. Before the inhabitants of a township which has elected to work the roads by hire can be warned out, there must be an apportionment of the labor in the same proportion as the taxes assessed for the support of the government: *Wallace v. Bradshaw*, 56 N. J. L. 339. Taxes must be proportionately assessed on persons and property, but there is no constitutional provision that money raised by taxation must be appropriated in such a manner that the several taxpayers or districts of taxpayers will be directly benefited in proportion to the amount of their taxes: *School Dist. v. Prentiss*, 66 N. H. 145. The New York statute concerning the settlement and collection of arrearages of unpaid taxes in Brooklyn, provided for the hearing by the board of assessors of objections by affected owners, and declared that the board's determination as to the amount to be charged on each parcel of land be conclusive. Held, that the act was not unconstitutional as failing to provide for any apportionment of taxes: *Lamb v. Connolly*, 122 N. Y. 531; *Terrel v. Wheeler*, 123 N. Y. 76; *Fithian v.*

Wheeler, 125 N. Y. 696; *Martin v. Stoddard*, 127 N. Y. 61.

² The citizen's right is to pay no more than his just proportion; and the legislature cannot arbitrarily determine the amount, although it may fix the aggregate sum to be raised, and the area of the property which shall pay it: *In re Union Coll.*, 129 N. Y. 308; *Nehasane Park Assoc. v. Lloyd*, 167 N. Y. 431. A legislative act which is in effect a selection of individuals from a general class for taxation is not sustainable by showing that it is no more onerous a burden than they should bear; "this fact does not affect the question of legislative power, and cannot give validity to the act:" *Albany, etc. Bank v. Maher*, 9 Fed. Rep. 884. See *Stuart v. Palmer*, 74 N. Y. 183. An act excluding certain lands from the established limits of a drainage district and exempting them from future drainage assessments is void. "The improvement necessary or indispensable to, and undertaken by, a district, must be not merely commenced, but executed either in whole or in part by the entire district. Unless or until all are released by the execution or failure of the undertaking, "or — according to circumstances — by the satisfaction of the full or proportionate shares of their liability, all are and remain bound:" *New Orleans Canal, etc. Co. v. New Orleans*, 30 La. An. 1371. A statute authorizing a city to provide a system of sewer-

tax is to be levied upon property, agencies for the apportionment of it by the prescribed rule are as indispensable as the rule itself. And the duty they have to perform is, to make the sum demanded of any one person or laid upon any one parcel of property have some fixed ratio, not only to the whole tax, but also to that demanded of every other person, or laid upon every other piece of property. Without this, as has been forcibly said, the exactions of money for the public are mere forced contributions, and taxation will differ from the eminent domain only in this: that the latter demands the property of the citizen when necessity requires it, and on making compensation, while the former exacts it at discretion and without compensation.¹

In respect to the apportionment of taxes in general, after the subjects of taxation have been determined upon, the following may be stated as general principles:

1. The taxing district through which the tax is to be apportioned must be the district which is to be benefited by its collection and expenditure. The district for the apportionment of a state tax is the state, for a county tax the county, and so on. Subordinate districts may be created for convenience, but the principle is general, and in all the subordinate districts the rule must be the same.²

age, and to assess taxes therefor against the land-owners benefited, is not invalid because prescribing no special mode of apportioning the taxes, as the city would incidentally have the power to adopt some fair and legal mode: *Gatch v. Des Moines*, 63 Iowa 718. Where a railroad company's charter has conferred upon municipalities power to subscribe to its stock, and, by implication, power to levy taxes to meet the obligation, a failure to comply with the requirement of the act that the ordinance shall specify in detail the purposes of the appropriations and the amount appropriated for such purpose, and, where an apportionment is necessary, how it shall be made, vitiates the ordinance and any levy there-

under: *Peoria, D. etc. R. Co. v. People*, 116 Ill. 401.

¹ *Christiancy, J.*, in *Woodbridge v. Detroit*, 8 Mich. 274, 309, following and approving *Lexington v. McQuillan's Heirs*, 9 Dana 518. Compare *Wilson v. Supervisors*, 47 Cal. 91; *Chicago v. Larned*, 34 Ill. 203; *Creote v. Chicago*, 56 Ill. 422; *Weller v. St. Paul*, 5 Minn. 70; *Weeks v. Milwaukee*, 10 Wis. 242, 258; *State v. Portage*, 12 Wis. 562.

² *People v. Salem T'p Board*, 20 Mich. 452; *Washington Supervisors v. Saltville Land Co. (Va.)*, 39 S. E. Rep. 704. The requirement of the New Hampshire constitution that taxes must be proportionately assessed "for the public service" is answered if the public money is ap-

2. The basis of apportionment which is fixed upon by the general rule must be applied throughout the district.¹ There cannot be two rules of apportionment for the same tax in the same district; if there could be, there might be any number,

plied to the public uses of the political division for which it is raised: *School Dist. v. Prentiss*, 66 N. H. 145. And therefore the statute authorizing towns, at their annual meetings, to direct in what manner the school money shall be assigned to the school districts, is constitutional: *Ibid.* To warrant an apportionment of the expense of constructing a highway among neighboring towns, such towns must be benefited by the use of the highway for purposes of travel; it is not enough that the highway will bring increased trade and business: *Platt v. Milton*, 58 Vt. 608. The fiscal court, consisting of the county judge and magistrates both inside and outside of a city separated from the county for governmental purposes, must levy a tax for expenses common to both county and city on all property of the county subject to taxation: *Richardson v. Boske* (Ky.), 64 S. W. Rep. 919. Adjoining territory in two counties having been made a "no fence" district "under a statute directing that a fence should be erected by county commissioners around the district, the expense to be met by a tax on all land within the district, it was held that all the land in the district should be taxed uniformly, although more fencing was required in one county than in another: *Greene County Com'rs v. Lenoir County Com'rs*, 92 N. C. 180. A statute requiring the board of supervisors of each county to levy upon the taxable property thereof a certain tax for school purposes, but which does not include a levy upon the taxable property within the limits of a town which is a separate school district, is not un-

constitutional because the schools in the town may get the benefit of a tax on a larger amount of property, in proportion to the number of children of school age, than the county: *Bordeaux v. Meridian L. & I. Co.*, 67 Miss. 304. An apportionment of taxes for street improvement is not governed by the advantage or disadvantage to any person within the tax district, but by the benefits to the district as a whole, and on this basis property may be assessed which derives no benefit from the improvement. But the rule cannot be so extended as to lay on property not benefited a tax exceeding its value, as this would be spoliation, not taxation: *Preston v. Rudd*, 84 Ky. 150. The power of the legislature to distribute a tax for the payment of the expenses of laying out or improving a highway is not necessarily confined to the precise territory in which the expenditure was made: *People v. Board of Supervisors*, 112 N. Y. 585.

¹Where the boundaries of a city constituting one school district are enlarged, the school fund must be raised from the whole district by equal taxation, regardless of when the assessment period commenced, or the boundaries of the district at such time, or when the money will be expended: *Seattle v. Board*, 3 Wash. 154. When a city is part of a township it is not competent for the legislature to exempt its inhabitants from the payment of township taxes for highway purposes: *O'Kane v. Treat*, 25 Ill. 458. For a similar case, see *Fletcher v. Oliver*, 25 Ark. 289. An ordinance assessing the cost of improving a street as a special tax upon the contiguous property on the

and in effect there would be none at all, and every man might be assessed arbitrarily.¹

3. Though the apportionment must be general, a diversity in the methods of collection violates no rule of right, and is as much admissible as a diversity in police regulations. Indeed, diversity in this regard may, under some circumstances, be an absolute necessity. Of this the country had illustrations in the case of federal taxes during the late civil war. The taxes

principle of assessing each lot with the cost of improving the part of the street in front of it is void as imposing the burden unequally, and not in proportion to the benefits conferred: *Davis v. Litchfield*, 145 Ill. 313.

¹*Tide Water Co. v. Coster*, 18 N. J. Eq. 518. In *Wilson v. Supervisors*, 47 Cal. 91, it was held incompetent to authorize the supervisors to remit a levee tax on part of the district. And yet it would have been competent originally to so bound the district as to exclude the part on which it was proposed to remit the tax. That the basis of the apportionment is not necessarily the same for general and local taxes, even when value is the standard, is illustrated by the case of *Insurance Co. v. Baltimore*, 23 Md. 296. It appears from that case that for the purposes of an apportionment of state taxation among the municipal divisions, the nominal capital of private corporations was assumed to be the value. But in imposing the tax on the corporations themselves, or their members, the actual value was ascertained. This method would be likely to lead to some inequalities in the distribution of state taxation between districts, but they could not be serious. In this connection may be mentioned several cases in which classes of taxable property were attempted to be relieved from the apportionment. In one of these, the personal property was not to be taxed for the payment of a city debt, for the reason, prob-

ably, that the purpose for which the debt was contracted was supposed to have benefited specially the real estate: *Gilman v. Sheboygan*, 2 Black 510. Others were where, in assessing the real estate for municipal taxes, the value of improvements was required to be excluded. In all these cases, the discrimination has been held to be beyond the constitutional power of the legislature. If the tax is to be assessed for a corporate purpose, it must be uniform as to persons and property. The burden must be imposed upon all the property within the limits to be taxed. Any other rule would utterly destroy the equality and uniformity contemplated by the constitution. If personal property or improvements may be exempted, with the same propriety and justice the law might compel one-half the real estate within the district to sustain the whole burden: *Thornton, J.*, in *Primm v. Belleville*, 59 Ill. 142, 144; *Hale v. Kenosha*, 29 Wis. 599. The tax in the Wisconsin case was for a railroad debt; in the other for a sewer. In *Baltimore v. Hughes*, 1 G. & J. 480, where a city council had authority to levy a tax for a public improvement on the district benefited thereby, it was held that if the ordinance providing for the tax showed the improvement to be for the general benefit of the city, and not of the particular district in which the tax was ordered, the tax was void.

under internal revenue laws were laid by general rules, but special regulations were required for their enforcement in insurrectionary districts, and were therefore provided. So the federal land tax might be assumed by one state, while in another it might be necessary to have elaborate provisions for the sale of the property taxed.¹

4. It is no objection to a tax that the rule of apportionment which has been provided for it fails in some instances, or even in many instances, of enforcement. Evasions of duty are liable to occur under all laws; but an evasion by one individual cannot give another a legal right to be excused. If the law establishes a uniform rule, its validity cannot depend upon the certainty or uniformity of its enforcement.²

5. The apportionment of the tax is not to be extended to embrace persons or property outside the district. This is a matter of jurisdiction, and if there are any exceptions to the rule they must stand on very special and peculiar reasons.³

6. Although exemptions may be made, as has been previously shown, special and invidious discriminations against individuals are illegal.⁴ This, so far as we know, is not disputed; and

¹ The federal direct-tax act of 1861-62 required an apportionment according to the last state assessment and valuation, and the action of the tax commissioners for a certain state in substituting a different and higher rate was beyond their authority, so that the excess of the tax could be recovered back: *Seabrook v. United States*, 21 Ct. of Cl. 39.

² In *United States v. Riley*, 5 Blatch. 204, 209, *Shipman, J.*, speaking of the internal revenue law, says: "The law is uniform, and thereby conforms to the constitution. Its validity does not depend on the celerity or uniformity with which it can be executed in some disturbed districts of the country. Tax laws, both state and national, are required to be uniform. This is an elementary principle of legislation, resting upon the solid foundation of justice. But it is a novel doctrine that a law, uni-

form in its provisions, can be annulled by the refusal of a portion of those on whom it is designed to operate to comply with its provisions. If this notion were to prevail, civil commotion or foreign invasion within a small district of the country would paralyze the government and repeal the fundamental law upon which its existence depends."

³ See *ante*, pp. 24, 25, 84-94.

⁴ The rule of uniformity applies to wharf and dockage charges laid on the commerce of a city: *People v. San Francisco, etc. R. Co.*, 35 Cal. 606. The omission, in apportioning the expense of a road improvement, of one of the municipalities, cannot be objected to by a taxpayer whom such omissions could not injure: *Senor v. Board of Com'rs*, 13 Wash. 48. A statute requiring taxes to be apportioned between owners of land and owners of minerals therein, accord-

there is plausible ground for at least a question whether the principle may not apply in some cases to the establishment of small districts for the construction of important public works; districts, the establishment of which, in view of the purpose for which the tax is to be laid, is equivalent to the singling out of a few persons for invidious discrimination. It has been held in one case that a statute was void which, as to certain portions of a city street, empowered the common council to cause it to be improved in a manner exceptionally expensive, at the cost of the abutting owners and against their will, when as to all the other streets of the city the owners of the larger proportion of the frontage must petition for such an improvement before it could be ordered.¹ The statute was looked upon as an abuse of the legislative power to apportion taxes; as perhaps it was. But the case must be very extraordinary to warrant the court in holding that the legislature, in acting upon a subject within its admitted authority, has deprived itself of power by abusing it.² It must in effect be a case in which the legislature, while assuming to do one thing which was within its power, has actually attempted another which was not.

Some of the cases which consider the territorial apportion-

ing to the value of their respective interests, is not objectionable: *Low v. Lincoln County Court*, 27 W. Va. 785.

¹ *Howell v. Bristol*, 8 Bush 493, 497. Compare *Covington v. Casey*, 3 Bush 698; *Washington Avenue*, 69 Pa. St. 352.

² In *Arbegust v. Louisville*, 2 Bush 271, 275, *Williams, J.*, has the following remarks regarding the change of taxing districts by extension of city boundaries: "When, in the judgment of the legislature, the interest of a suburban population demands local regulations, and the peace, tranquillity and order of the public indicates that such is necessary, we cannot doubt its constitutional power to so enact, nor question its power to tax, for such purposes, the real as well as the personal estate of the people, nor

the large as well as the small lots included therein; for it is more consonant with the entire genius, equality and justice of our constitution and laws, that each should bear the burdens of that government which protects his person and property according to the worth of his estate, than to discriminate against the small in favor of the large property holders. But whatever may be said of the intrinsic justice of such a measure, there is no power in the courts to control this, when the taxing power is conferred in good faith to uphold local government and give police regulations to the population, and not merely to embrace taxable property for revenue purposes in order to lighten the burdens of others."

ment of taxes — for example, of state taxes among the counties, and of county taxes among the townships — are mentioned in the margin.¹ It has been decided that as a board of assessors, in apportioning state and county taxes, is a special statutory tribunal, its action is valid only when performed in the manner and in compliance with the forms prescribed by the state which conferred jurisdiction.² And where the apportionment of a tax between city and county is a mere ministerial act, if the proper officer fails to act the true amounts may be ascertained in some other way.³

¹Hubbard v. Winsor, 15 Mich. 146; Marion T'p, 101 Mich. 256; Hoffman Auditor-General v. Jackson Supervisors, 24 Mich. 237; Pillsbury v. Auditor-General, 26 Mich. 245; Attorney-General v. St. Clair Supervisors, 30 Mich. 388; Yelverton v. Steele, 36 Mich. 62; Fay v. Wood, 65 Mich. 390; Boyce v. Sebring, 66 Mich. 210; Auditor-General v. Menominee Supervisors, 89 Mich. 532; Boyce v. Auditor-General, 90 Mich. 314; Sheldon v. Marion T'p, 101 Mich. 256; Hoffman v. Lynburn, 104 Mich. 494; Sea Isle City v. Board of Assessors, 49 N. J. L. 483; East Brunswick T'p v. New Brunswick, 57 N. J. L. 145; State v. Linn County, 25 Or. 503.

²Sea Isle City v. Board of Assessors, 49 N. J. L. 483.

³Logan County v. Lincoln, 81 Ill. 156.

CHAPTER VIII.

OFFICIAL ACTION IN MATTERS OF TAXATION.

Necessity for official action.—Taxation is an act of government. Government can only perform its functions by means of officers, and must make all its demands upon its citizens through the medium of official action. However just it may be that an individual, in any condition or under any specified circumstances, should contribute a part of his means to government revenues, there is no lawful method of compelling him to do so except through the compulsion of official process. No individual as such, or by virtue of his citizenship, can compel another to perform his duty to the state. He must come clothed with the authority of the state for the purpose, or in contemplation of law he comes as a trespasser, whose lawless intrusion may rightfully be resisted and repelled.¹

¹ A valid assessment can only be made by a proper officer: *Bruce v. Vanceburg & S. L. T. R. Co.* (Ky.), 35 S. W. Rep. 112; *Farrington v. New England Inv. Co.*, 1 N. D. 102. An assessment for taxation must be made by an officer authorized either *de jure* or *de facto* to make it, or it will be invalid: *Tampa v. Kaunitz*, 39 Fla. 683. Taxes levied by officers having no legal mandate to do so are void: *Zeigler v. Thompson*, 43 La. An. 1013. The duty of assessing a paving tax having been assigned to the holder of an office which became vacant on the expiration of the city's charter, an assessment made by an unauthorized officer is void: *Walker v. District of Columbia*, 6 Mackey 352. An attempted assessment by a deputy appointed without statutory authority by an assessor is absolutely void, and no tax can be predicated thereon: *Farrington v. New England Inv. Co.*, 1

N. D. 102. The enforcement of an assessment made by an unauthorized officer will be enjoined: *Union Pac. R. Co. v. Donnellan*, 2 Wyo. 459. Official acts, such as a tax sale, must be performed by the proper officer, not by a clerk not acting under his direction: *Hall v. Collins*, 117 Mich. 617. A tax deed executed by a special township tax collector is void where no such officer existed under the laws of the state at the time of his appointment: *Felch v. Travis*, 92 Fed. Rep. 210. One has a right to refuse to work out his highway tax where there are no officers qualified to demand and collect the taxes or make the proper return: *Sumner v. Gardiner*, 88 Me. 584. An assessment for a street improvement made by commissioners appointed to assess the cost of improvements in another street is void: *Ferris v. Chicago*, 162 Ill. 111. Where the appointment and sittings of a board of

Officers, who are.—An office is defined to be a public charge or employment, and he who performs the duties of that office is an officer.¹ There are legislative, executive, and judicial officers, with duties pertaining to their respective departments of the government, and there are also inferior officers, commonly designated ministerial, whose duty it is to execute mandates lawfully directed to them by superiors, whether of one department or of another.² The proceedings in tax cases are intrusted by the law in part to officers who perform mere ministerial duties, and in part are confided to those who, though not belonging to the judicial department, have functions which in a certain sense are judicial.³ Functions of constitutional

equalization are without authority, taxpayers are not required to file complaints of erroneous assessments: *Slaughter v. Louisville*, 89 Ky. 112. The whole course of proceeding from the levy of a tax to its collection is confided to officers designated by the statute, whose duties and the time and manner of their discharge are specified by the law: the power to levy and collect taxes conferred upon a city board of supervisors does not imply a power to collect them in any other manner, but the mode of exercise of the power conferred being prescribed, the mode prescribed is the measure of the power; and, therefore, such board has no power to enter into a contract with a private individual to proceed and cause to be collected from owners what may be due on account of sales of real estate made to the state for delinquent taxes, and to pay him a percentage on such collection: *House v. Los Angeles*, 104 Cal. 73. As the duty of searching for secreted property is not imposed upon city tax officers, a city may, under the general power to levy and collect taxes upon all property subject to taxation, contract with a private person to search for property secreted and omitted from the tax duplicate: *Richmond v. Dickinson*, 155 Md. 345. A county treasurer charged by the law with the

duty of collecting county taxes cannot be empowered by the county board to employ counsel to assist him: *Miller v. Embree*, 88 Ind. 133.

¹ *Marshall*, Ch. J., in *United States v. Maurice*, 2 Brock. 96, 102. Bouvier's definition of an officer is "one, who is lawfully invested with an office," which seems to exclude what are known as officers *de facto*. "A public office is the right, authority, and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer:" *Mechem on Public Officers*, § 1.

² Bouvier's Dictionary, title "Officers;" *Mechem on Public Officers*, §§ 18-21; *Sutherland v. Governor*, 29 Mich. 320.

³ An assessor, whose acts as such are judicial in their nature, has no authority to appoint a deputy unless expressly authorized by statute: *Farrington v. New England Inv. Co.*, 1 N. D. 102. A county board of supervisors acts judicially in determining taxes and extending them on the roll; and, therefore, where it adjourns without completing the roll a super-

officers cannot be exercised or transferred by the legislature;¹ but in the absence of constitutional restrictions the legislature

visor has no authority to perform any of the omitted acts, as judicial duties cannot be delegated: *Ne-Ha-Sa-Ne-Park Assoc. v. Lloyd*, 7 App. Div. (N. Y.) 359; see *People v. Hagerdorn*, 36 Hun 610. A statutory provision that a judge shall not sit as such, or take any part in the decision of a cause, if he is related by consanguinity or affinity to any of the parties, does not apply to such *quasi-judicial* officers as assessors: *O'Reilly v. Kingston*, 114 N. Y. 439. Taxing officers and boards are not courts and do not exercise judicial powers as such, and their actions are not judgments: *Mussey v. Adair*, 55 Ohio St. 466; *Hagerty v. Huddleston*, 60 Ohio St. 149. See *Baldwin v. Shine*, 84 Ky. 502. The power to fine and imprison for contempt cannot be conferred upon a state board of tax commissioners, since the board belongs to the executive department of the state, and the power to punish for contempt belongs exclusively to courts: *Langenburg v. Decker*, 131 Ind. 471. A statute making the secretary of state and the state auditor *ex officio* members of the state board of tax commissioners is not objectionable as clothing executive and administrative officers with judicial powers: *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 625. Members of the executive branch of the government may be charged with the duty of assessing property, or of acting on a board of equalization: *Sawyer v. Dooley*, 21 Nev. 390. In the absence of any constitutional or statutory provision as to the duties of an assessor, they are such as are usually incumbent upon such officers: *People v. Ames*, 24 Colo. 422.

¹ Assessors being officers created by the constitution, the legislature cannot exercise their functions in relation to the assessment of property for taxation, but can only enact "general laws which shall prescribe such regulations as shall secure a just valuation for taxation of all property," etc.: *In re House Bill*, 9 Colo. 635. A bill nominally providing for the assessment of mining property by the assessor, but declaring that all lode claims shall be valued at a certain sum per acre, and all placer claims at another certain sum per acre, is an attempt by the legislature to make the assessment: *Ibid.* Where the constitution requires the election for each county of an assessor whose duties are to assess and fix the valuation of property for taxation, a statute classifying counties into five classes, and dividing the lands of each class of counties into eight classes, with fixed values, and requiring the assessor to determine the class of the land assessed, and then to assess it at the valuation fixed, is unconstitutional, because it usurps the assessor's constitutional right to fix the valuation of property: *Hawkins v. Mangrum* (Miss.), 28 South. Rep. 872. An *ad valorem* assessment cannot be made by the legislature: *Slaughter v. Louisville*, 89 Ky. 112. See, for a case held to be an attempt of the sort, and illegal, *Albany, etc. Bank v. Maher*, 9 Fed. Rep. 884. Also, *Attorney-General v. Leavenworth*, 2 Kan. 61. A constitutional provision for the election of an assessor in each county, "with such duties as are now or may be prescribed by law," was held not to preclude legislation authorizing the appointment of county boards of equalization: *Pulaski County Board of Equal. Cases*, 49

may prescribe the agencies to be employed in tax proceedings.¹

Officers de facto.—It is sometimes found that the person who is performing the duties of an office is not the one to whom the law, if properly followed, would have confided it. This

Ark. 518. The word "assess" as used in the provision of the Kentucky constitution for conferring upon the proper authorities of counties, cities, etc., the power to assess, means to levy a tax, and does not mean the valuation of property for taxation; and, therefore, such provision does not prohibit the general assembly from providing for the valuation by the state board of property for local taxation: *South Covington & Co. St. R. Co. v. Baltimore (Ky.)*, 49 S. W. Rep. 23. Powers conferred upon a state board of equalization to assess all the railroad property in the state are not unconstitutional because of a provision in the constitution for the election of an assessor in each county without prescribing his duties: *Ames v. People*, 26 Colo. 83. A provision of a turnpike act authorizing the turnpike company to appoint a person to make the assessment is void; but as the legislature has power to authorize the tax, the assessment may be made by the assessor of the county, and returned the same as other lists, subject to the same right of revision: *Bruce v. Vanceburg & S. L. T. R. Co. (Ky.)*, 35 S. W. Rep. 112. Under a statute providing that the corporation commissioners shall constitute a board of appraisers and assessors for railroad, telegraph, canal, and steamboat lines, an assessment of taxes on the capital stock of a steamboat company by the county commissioners is void: *Beaufait County Com'rs v. Old Dominion S.S. Co. (N. C.)*, 39 S. E. Rep. 18.

¹*State Tax Com'rs v. Grand Rapids Assessors*, 124 Mich. 491; *State v.*

Thorne (Wis.), 87 N. W. Rep. 797. The Michigan case holds that no right of local self-government is infringed by employing a state agency, such as the state board of tax commissioners, to supervise and revise the assessments made by the local assessors. The Wisconsin case sustains a statute providing for the review of the county equalization of valuations by a commission appointed by the circuit judge for such county. Constitutional provisions that for all corporate purposes municipalities may be vested with authority to assess and collect taxes, and that the legislature shall have no power to impose taxes on municipalities for municipal purposes, do not invalidate a statute making the assessment roll of a city of the first class the same as that of the county, and making the county treasurer *ex officio* collector of taxes for the city: *State v. Carson*, 6 Wash. 250. A legislature may authorize the collection of back taxes by a sheriff who is liable for them, but whose term of office has expired: *Jones v. Arrington*, 91 N. C. 125. A charter provision authorizing the city tax-collector to make sales of property for delinquent taxes gives no authority to an ex-collector to make such sale: *McCullough v. Hunter*, 90 Va. 699. The state comptroller held to be a "collector" of taxes within the meaning of certain Tennessee statutes, and, therefore, a proper officer to assess railroad property: *State v. Memphis & C. R. Co.*, 14 La. 56.

may happen from an uncertainty regarding the method by which the officer should be chosen, a dispute of fact concerning the result of the election which has been held, or from many other causes. If, in any such case, a person claiming to be chosen solves the doubt in his own favor, and takes possession of the office, and if the public acquiesce in his assumption, he then performs the duties of the office, and comes within the definition which has been given of an officer. But while he is an officer in fact, if he is not rightfully such he may at any time be ousted of his position by judicial proceedings, instituted in behalf of the state, at the instance of the public prosecutor. Perhaps also the law of the state will allow the person rightfully entitled, and who, by the wrongful possession, is excluded from the office, to institute a proceeding for the purpose on his own behalf. From what has been said, it will be seen that there may therefore be officers *de jure* and officers *de facto*. An officer *de jure* is one who is not only invested with the office, but has been lawfully appointed or chosen, and therefore has a right to retain the office and receive its perquisites and emoluments. An officer *de facto* is defined to be one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law.¹ He comes in by

¹Parker v. Kett, 1 Ld. Raym. 658, 12 Mod. 467, per Holt, Ch. J.; King v. Bedford Level, 6 East, 356, 368, per Ellenborough, Ch. J.; Cary v. State, 76 Ala. 78; Davis v. Police Jury, 1 La. An. 288; Petersilea v. Stone, 119 Mass. 465; Ray v. Murdock, 36 Miss. 692; Tucker v. Aiken, 7 N. H. 113. "An officer *de facto* is one who exercises the duties of an office under color of appointment or election to that office:" Plymouth v. Painter, 17 Conn. 585, 588, per Storrs, J. To the same effect are Brown v. Lunt, 37 Me. 423, 438; Ex parte Strang, 21 Ohio St. 610. A person exercising the functions of a valid public office by color of right and with the acquiescence of the public will be deemed to be an officer *de facto*, and his acts will protect third persons even though he was appointed or

elected under an unconstitutional statute: State v. Carroll, 38 Conn. 449, and cases there cited; People v. Knopf, 183 Ill. 410; Cole v. Black River Falls, 57 Wis. 110. Or even though he was not eligible to the office: Lockhart v. Troy, 48 Ala. 579; Darrow v. People, 8 Colo. 417; Wolfe v. Murphy, 60 Miss. 1; Dugan v. Farrier, 47 N. J. L. 383. Or though the office to which he was chosen was unlawfully vacated: Watkins v. Inge, 24 Kan. 612. Or though the election was held without proper notice: Yorty v. Paine, 62 Wis. 154. Or though he was appointed when he should have been elected: Chicago, etc. R. Co. v. Langlade County, 56 Wis. 154. Or though he has legally forfeited his office by accepting one that is incompatible: Woodside v. Wagg, 71 Me. 207. Or though he has

claim and color of right, or he exercises the office with such circumstances of acquiescence on the part of the public as at least affords a strong presumption of right, though by reason of some defect in his title, or of some informality, omission, or want of qualification, or by reason of the expiration of his term of service, he is unable to maintain his possession, when called upon by the government to show by what title he holds it.¹ It is immaterial in what the defect consists, or whether the claim is in good faith or merely colorable. The public acquiescence and reputation attach certain important consequences to his occupation of the office, which the interest of the state does not permit to depend upon his own motives or the degree of plausibility which attaches to his claim.² But to

legally forfeited his office by removing from the county: *Case v. State*, 69 Md. 46; but see *People v. Highland Park*, 88 Mich. 653. Or though he has not given the prescribed bond: *Gunn v. Tacket*, 67 Ga. 725; *Soudant v. Wadhams*, 46 Conn. 218. Or only a defective one: *Adams v. Tator*, 42 Hun 384. Or though the bond was not duly filed: *State v. Dierberger*, 90 Me. 369; *Douglass v. Neill*, 7 Heisk. 438. Or though he has failed to file oath of office and bond within the time prescribed by law: *People v. Payment*, 109 Mich. 553. Or though he has held over after the expiration of his term: *Petersilea v. Stone*, 119 Mass. 465; *Galbraith v. McFarland*, 3 Cold. 267; *Morton v. Lee*, 28 Kan. 286; *Threadgill v. Railroad Co.*, 73 N. C. 178; *Wapello County v. Big-ham*, 10 Iowa 39. A tax execution issued by a tax-collector after he goes out of office is not a legal process, and any sale of property is a mere nullity; but if the collector's official term had expired, but his successor had not qualified, he would still be in office so long as he acted officially: *Skinner v. Roberts*, 92 Ga. 366. One cannot be an officer *de facto* who is constantly in hiding, has no place of business, and can only be communicated with by

means of his friends in secret: *Williams v. Clayton*, 6 Utah 86. Where a lawfully appointed officer still claims the office and refuses to yield to a subsequent appointee, the latter cannot be regarded as a *de facto* officer: *Hallgren v. Campbell*, 82 Mich. 255. As to what is sufficient proof of official character, see *Albright v. Cobb*, 30 Mich. 355; *Bird v. Perkins*, 33 Mich. 28; *Curran v. Norris*, 58 Mich. 512; *Tower v. Welker*, 93 Mich. 332.

¹ *Wilcox v. Smith*, 5 Wend. 231.

² "An officer *de facto* is one whose acts, though not those of a lawful officer, the law upon principles of policy and justice will hold valid, so far as they involve the interests of the public and those of third persons, where the duties of the office were exercised: 1. Without a known appointment or election, but under such circumstances of reputation or acquaintance as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be. 2. Under color of a known and valid appointment or election, but where the officer has failed to conform to some precedent requirement or condition, as to take an oath, give a bond, or the like.

support one's acts as those of an officer *de facto* they must have been done under color of an office the duties of which he has discharged.¹ And there can be no officer *de facto* where no office *de jure* is provided for by law, as where an office is created by an unconstitutional statute.²

Usurpers. It is possible also that one may attempt to perform the duties of an office, who neither is chosen to do so, pursuant to law, nor supported by the public acquiescence. Such a person cannot acquire the reputation of being the officer he assumes to be; he is a mere usurper, and his acts are wholly void for all purposes. No one is under obligation to recognize his claim to the office, and whoever does so must take upon himself the consequences. It is of high importance that the encouragement of such claims should not be allowed to bring disorder and insecurity into public affairs.³ But an usurper

3. Under color of known election or appointment, void because the officer was not eligible or because there was a want of power in the electing or appointing body, by reason of some defect or irregularity in its exercise; such ineligibility, want of power or defect being unknown to the public. 4. Under color of an election or appointment by or pursuant to a public unconstitutional law, before the same is adjudged to be such: "State v. Carroll, 38 Conn. 449, 471, per *Butler*, Ch. J. See the cases cited in *State v. Carroll*, *supra*, and also *Creighton v. Commonwealth*, 83 Ky. 142; *Sheehan's Case*, 122 Mass. 445; *Ex parte Strang*, 21 Ohio St. 610; *Hamlin v. Kassafer*, 15 Or. 456; *Commonwealth v. McCombs*, 56 Pa. St. 436.

¹ *Bailey v. Fisher*, 38 Iowa 229.

² *Norton v. Shelby County*, 118 U.S. 424; *Leach v. People*, 122 Ill. 420; *People v. Knopf*, 183 Ill. 410; *Decora v. Bullis*, 25 Iowa 12; *In re Hinkle*, 31 Kan. 712; *Carleton v. People*, 10 Mich. 250, 258; *State v. District Court*, 72 Minn. 226; *Ex parte Snyder*, 64 Mo. 58; *Flaucher v. Camden*, 56 N. J. L. 244; *People v. White*, 24

Wend. 539; *Cole v. Black River Falls*, 57 Wis. 110; *Yorty v. Paine*, 62 Wis. 154. The rule that there cannot be an officer *de facto* where there is no office to fill is modified as to offices created by the legislature so long as the statute creating them has not been declared unconstitutional: *Donough v. Dewey*, 32 Mich. 309.

³ See *Plymouth v. Painter*, 17 Conn. 583, 593; *Munson v. Minor*, 53 Ill. 594; *Hooper v. Goodwin*, 48 Me. 80; *Keeler v. Newbern*, 1 Phil. N. C. 505; *Peck v. Holcombe*, 3 Port. 329; *Hamlin v. Kassafer*, 15 Or. 456; *McGraw v. Williams*, 33 Grat. 510. Acts of an actual usurper — of who is not and cannot be an officer *de jure*, because there is not and cannot be an office *de jure*, to be filled by any one, and who has intruded upon the functions and performed the acts required by law to be done by officers who exist at the time *de jure* as well as *de facto* — cannot be relied upon to sustain the validity of an assessment: *State v. District Court*, 72 Minn. 226. An assessment made by persons not shown to have been either elected or sworn was held to be by mere intruders who came in

may become an officer *de facto* if his assumption of the office is acquiesced in.¹

Questioning title of officer *de facto*. The case of an officer *de facto* is different. To deny validity to his acts would lead to insecurity in both public and private affairs. It would compel those having occasion to transact business with a public officer, before they could put faith in his official acts, to go into a careful examination of all the evidences of his title, and of the provisions of law bearing upon them, in order to determine whether the assumption of official character is warranted by law, and is supported by a compliance with the necessary formalities. "It would constitute every citizen a judge of official titles. He must look to the constitution to see that the officer was eligible to an election or appointment; to the statute to ascertain when, where and how the election or appointment is required to be made, and to the poll books and archives of the state for the purpose of ascertaining the facts; and then determine at his peril the mixed question of law and fact involved in the ascertainment of official character."² The mere statement of the case is sufficient to show that such a requirement would in the highest degree be unjust to the private citizen, and detrimental to public interests. But to treat the official acts of a *de facto* incumbent as void would be equally unjust to him. When the controversy should arise collaterally, as commonly it must, the officer himself would not be a party to the record, and would have no opportunity and no privilege of meeting the issue raised, although the decision might as effectually determine his right to act as if he had been proceeded against directly by the appropriate process of *quo warranto*. "This would be judging a man unheard, contrary to the principles of natural justice and the policy of the law." Until he

without color of authority: *Birch v. Fisher*, 13 S. & R. 208. An officer who holds over in good faith, though without warrant of law, is not an usurper: *Kreidler v. State*, 24 Ohio St. 22. Compare *State v. McFarland*, 25 La. An. 547.

¹ *State v. Carroll*, 38 Conn. 449.

² *Blackwell on Tax Titles*, 94. See

Eaton v. Harris, 42 Ala. 491; *Plymouth v. Painter*, 17 Conn. 585; *Gumberts v. Express Co.*, 28 Ind. 181; *State v. Lewis*, 22 La. An. 33; *Cahill v. Insurance Co.*, 2 Doug. 124; *Stockle v. Silsbee*, 44 Mich. 515; *Tower v. Welker*, 93 Mich. 332; *Cooper v. Moore*, 44 Miss. 386.

is removed by proceedings directly instituted for the purpose, and in which he is permitted to be heard, "he holds the office by the sufferance of the state, and the silence of the government is construed by the courts as a ratification of his acts, which is equivalent to a precedent authority. When the government acquiesces in the acts of such an officer, third persons ought not to be permitted to question them."¹ When, however, the officer himself attempts to build up a right in his own favor, it is not unreasonable to require him to defend his right, as he would be compelled to do if he should assert title to any article of property as against the true owner. His suit for the legal fees may therefore be successfully resisted, as may any attempt by him to enforce official process by the aid of the law. These are cases in which he is a party, and is properly called upon to demonstrate his title. Besides, if citizens were not permitted to resist his official claims in such proceedings, their acquiescence in them, until the state itself should be able to bring to a conclusion the formal proceedings to try the title, would be only an enforced acquiescence, and could not justly support a title to an office by reputation. The most that public policy could require in such cases would be that his *de facto* incumbency should be evidence of a right *prima facie* in his favor, but leaving the actual right subject to be disproved.² And if he is sued for any act which he can only justify as an officer, he is put to the proof that he was duly elected or appointed, and that any conditions, precedent have been complied with.³

¹ Blackwell on Tax Titles, 94; Bucknam v. Ruggles, 15 Miss. 180. See People v. Lathrop, 24 Miss. 235. Proceedings of a common council in laying a tax cannot be contested on the ground that by a change in the charter some of the seats were vacated, if the members continued *de facto* to act. Scoville v. Cleveland, 1 Ohio St. 126.

² Kent v. Atlantic Delaine Co., 8 R. I. 305, where it was held that one suing as collector to recover a tax gives sufficient *prima facie* evidence of his authority if he shows he has acted as such officer in regard to that

tax; but that this *prima facie* case is open to rebuttal. See, also, Colton v. Beardsley, 38 Barb. 29; Capwell v. Hopkins, 10 R. I. 378; Auditors v. Benoit, 20 Mich. 176; Pejepscott Proprietors v. Ransom, 14 Mass. 145. It was decided in Universalist Soc. v. Leach, 35 Vt. 108, that if an ineligible person is chosen sole prudential committee of a school district, his assessment of a tax voted by the district is void.

³ Lightly v. Clouston, 1 Taunt. 113; Riddle v. Bedford, 7 S. & R. 386, 392; Fetterman v. Hopkins, 5 Watts 539; Pike v. Hanson, 9 N. H. 491; Colburn

Validity of acts of officers de facto. On the other hand, the public by whose acquiescence the *de facto* officer has been permitted to act, and individuals who have transacted official business with him, have a right to rely upon the validity of that which has been done by him, to the same extent precisely as if the same acts had been performed in the same way by an *officer de jure*. When such acts come collaterally in question, neither the public that has thus acquiesced, nor individual citizens, are permitted to question them. They are as valid, to all intents and purposes, as if the title to the office had been unquestionable. This is the general rule, as it has been settled on grounds of public policy from the time of the Year Books.¹

v. Ellis, 5 Mass. 427; Fowler v. Beebe, 9 Mass. 231, 234; Sprague v. Bailey, 19 Pick. 436; Patterson v. Miller, 2 Met. (Ky.) 493; People v. Hopson, 1 Denio 574, 579; Greene v. Burke, 23 Wend. 488, 492; Schlencker v. Risley, 3 Scam. 483; Blake v. Sturtevant, 12 N. H. 567; Cummings v. Clark, 15 Vt. 653; Olney v. Pearce, 1 R. I. 292; Samis v. Kim, 40 Conn. 298, 310; Venable v. Curd, 2 Head 582. In First Parish v. Fiske, it is said that if parish assessors fail to take the oath of office, a tax assessed by them would be illegal and might be recovered back: 8 Cush. 264. But a tax which has been paid cannot be recovered back on the ground that the collector *de facto* had never been legally elected and sworn: Williams v. School District, 21 Pick. 75. It is not intended to assert here that in every case in which the state might oust an officer by *quo warranto* an individual could also take advantage of a defect in his title. The inquiry on behalf of the state may and does go beyond that which individuals may institute. A *prima facie* right is sufficient as against individuals, but only an indefeasible right as against the state. As an illustration of what is meant, the case of one

holding a legal certificate of election may be taken; if a lawful election was held, the certificate may conclude private parties, but the government would be at liberty to go beyond it and show that the election was accomplished by illegal votes, or that for any other reason the *prima facie* case was defective. See the discussion in Wayne Auditors v. Benoit, 20 Mich. 176.

¹ "The law favors the acts of one in a reputed authority, and the inferior shall never inquire if his authority is lawful:" Vin. Abr., tit. "Officer," G., 3. See Bac. Abr., "Offices and Officers," B.; People v. Collins, 7 Johns. 549, 551; McInstry v. Tanner, 9 Johns. 135; People v. Dean, 3 Wend. 438; Wilcox v. Smith, 5 Wend. 231, 234; Parker v. Baker, 8 Paige, 429; People v. Kane, 23 Wend. 414; People v. White, 24 Wend. 520; Fowler v. Beebe, 9 Mass. 231; Commonwealth v. Fowler, 10 Mass. 290; Nason v. Dillingham, 15 Mass. 170; Bucknam v. Ruggles, 15 Mass. 180; Gilmore v. Holt, 4 Pick. 257; Williams v. School Dist., 21 Pick. 75; Blackstone v. Taft, 4 Gray 250; Peter-silea v. Stone, 119 Mass. 465; Burke v. Elliott, 4 Ired. 355; Gilliam v. Reddick, 4 Ired. 368; Smith v. Bondu-

Officers de facto in tax cases. It remains to be seen whether these general principles are applicable in tax cases. It has sometimes been urged that in tax proceedings there was no proper room for the application of the doctrine which is ap-

rant. 74 Ga. 416; Farmers' & Merchants' Bank v. Chester, 6 Humph. 458; Beard v. Cameron, 3 Murph. 181; Brush v. Cook, Brayt. 89; Taylor v. Skrine, 2 Brev. 516; Plymouth v. Painter, 17 Conn. 585; Douglass v. Wickwire, 19 Conn. 489; State v. Carroll, 38 Conn. 449; Samis v. King, 40 Conn. 298; McGregor v. Balch, 14 Vt. 428; Downer v. Woodbury, 19 Vt. 329; Lyon v. State Bank, 1 Stew. 442; Barret v. Reed, 2 Ohio 409; Johnson v. Steadman, 3 Ohio 94, 96; Eldred v. Sexton, 5 Ohio 216; Ex parte Strang, 21 Ohio St. 610; Justices v. Clark, 1 T. B. Monr. 82, 86; Rice v. Commonwealth, 3 Bush 14; Creighton v. Commonwealth, 83 Ky. 142; Prickett v. People, 1 Gilm. 525, 529; Keyser v. McKissam, 2 Rawle 139; Riddle v. Bedford County, 7 S. & R. 386, 392; Baird v. Bank of Washington, 11 S. & R. 411; Neal v. Overseers, 5 Watts 538; McKim v. Somers, 1 Penrose & Watts 297; Commonwealth v. McCoombs, 56 Pa. St. 436; Gregg v. Jamison, 55 Pa. St. 468; Cooper v. Moore, 44 Miss. 386; Kimball v. Alcorn, 45 Miss. 145; Cabot v. Given, 45 Me. 144; Woodside v. Wagg, 71 Me. 207; Jones v. Gibson, 1 N. H. 266; Moore v. Graves, 3 N. H. 408; Morse v. Calley, 5 N. H. 222; State v. Tolan, 33 N. J. 195; State v. Farrier, 47 N. J. L. 383; Leach v. Cassidy, 23 Ind. 449; McCormick v. Fitch, 14 Minn. 252; Auditors of Wayne County v. Benoit, 20 Mich. 176; Druse v. Wheeler, 22 Mich. 439; Stockle v. Silsbee, 41 Mich. 619; Ex parte Bollman, 4 Cranch 75; Sawyer v. Steele, 3 Wash. C. C. 464; Willink v. Miles, Pet. C. C. 188; Ronkendorf v. Taylor, 4 Pet. 349; Lawrence v. Sherman, 2 McLean 488; United States v. Bachelder, 2 Gall. 15; Pierce v. Weare, 41 Iowa 378; New Orleans v. Klein, 26 La. An. 493. The right of a *de facto* officer to make an assessment cannot be attacked by a taxpayer on *certiorari* to review such assessment. State v. Brown, 53 N. J. L. 162. The action of a *de facto* tax-collector in returning property as delinquent for taxes unpaid within the time limited by the statute, and therefore liable to a penalty, cannot be questioned in a collateral proceeding: School Dist. v. Board of Imp., 65 Ark. 343. And in an action for a special assessment for improving a street by a board which for more than eight years has exercised, without its right being questioned in any direct proceeding, jurisdiction and control over the street, such board cannot be called upon to prove the regularity of the proceedings by which jurisdiction was ceded to it: West Chicago Park Com'rs v. Sweet, 167 Ill. 326. A taxpayer appearing before the board of equalization without objection cannot, in a subsequent proceeding, attack the validity of its organization: Commercial Electric L. & P. Co. v. Judson, 21 Wash. 49. A taxpayer who has not complained of his assessment cannot complain that the board of equalization was not regularly appointed, or that the persons appointed were not eligible: Powell v. Louisville (Ky.), 52 S. W. Rep. 798, citing Fonda v. Louisville (Ky.), 49 S. W. Rep. 785. The question whether, where the statute declares that the acts of one who shall presume to execute the duties of an office before taking the official oath shall be "absolutely void," such acts can have

plied in other cases in support of action by officers *de facto*; that the proceedings are summary and for the most part *ex parte*; that they may deprive the owner of his freehold by means of process which usually and perhaps necessarily is somewhat arbitrary, and that he is therefore entitled of right to have all the security which the law has intended he should have: in the character and standing of an officer duly and properly chosen for the particular duty; in the official oath of such officer, when one is required by law; in the official bond if one is made necessary; and indeed such security as would be afforded by a strict compliance with every provision which has been made by the revenue laws for the protection of taxpayers.¹

any validity as those of an officer *de facto*, is discussed, without reaching a decision, in *McNutt v. Lancaster*, 9 S. & M. 570.

¹ *Payson v. Hall*, 30 Me. 319; *Coite v. Wells*, 2 Vt. 318; *Isaacs v. Wiley*, 22 Vt. 674; *People v. Hastings*, 29 Cal. 449. Some of the cases which may seem to support this view are properly to be referred to some other principle. They often turn upon the question whether the statute is mandatory in requiring that something should be done which has been omitted, or whether the person who has assumed to act as officer held *de facto* the particular office to which the duty pertained; or some other question foreign to the precise point now under discussion. In *Oldtown v. Blake*, 74 Me. 280, it was held without in terms overruling *Payson v. Hall*, *supra*, that a collector who had been duly chosen, and had given bond but not taken the oath of office, was a good officer *de facto*, payment to whom would discharge the tax. And see *Stockle v. Silsbee*, 41 Mich. 615; *Kendall's Petition*, 85 N. Y. 302. But where selectmen in Maine are to become assessors when none are elected, on taking an oath of office as such, it is held that if they assume to act without taking the oath they are not assessors *de facto*: *Dresden v. Goud*,

75 Me. 298. And if two of the assessors take the oath of office before a person not authorized by law to administer it, the tax assessed by the board is illegal: *Orneville v. Palmer*, 79 Me. 472. But it has also been held in Maine that in the absence of any statute requiring village assessors to be sworn, the fact that the oath was administered to them by the corporation clerk does not render an assessment of taxes illegal: *Lord v. Parker*, 83 Me. 580. Record held insufficient to show that assessors were sworn: *Bowler v. Brown*, 84 Me. 377. In Maryland an assessment of taxes is not invalid because of the neglect of assessing officers to take the oath of office necessary to constitute them officers *de jure*: *Koontz v. Hancock County Com'rs*, 64 Md. 134. That in New Hampshire the requirement of an oath to the invoice and assessment is directory merely, see *Odiorne v. Rand*, 59 N. H. 504, and cases cited. In Arkansas it has been held that an assessor regularly elected and qualified by taking the oath prescribed by the constitution is a *de facto* assessor though he neglects to take a certain special statutory oath: *Barton v. Lattourette*, 55 Ark. 81; *contra*, *Martin v. Barbour*, 34 Fed. Rep. 701. Upon the construction of a statute in Vermont the listers' failure to

The reasons are plausible, but they are not very conclusive. Indeed if official action of officers *de facto* in judicial positions can be sustained, as it often has been,¹ though not only property but also liberty may depend upon it, it is difficult to suggest any distinguishing reason to remove tax cases from the application of the same principle. The clear and very strong preponderance of authority is, that the general policy of the law requires the acts of officers *de facto* to be sustained in tax cases, under the same circumstances and on the same imperative reasons that sustain them in others.²

take the official oath has been held fatal, and a tax paid under protest has been allowed to be recovered back though the list was sworn to: *Ayers v. Moulton*, 51 Vt. 115. And where listers supplemented the prescribed oath with qualifying words, the oath and the tax-list were vitiated: *Lynde v. Dummerston*, 61 Vt. 48. But in Vermont a school-district collector need not be sworn, no statute requiring it: *Brock v. Bruce*, 58 Vt. 261. Where the fact of an official oath is in question it may be shown by parol that the oath was taken though the law requires a record: *Briggs v. Murdock*, 13 Pick. 305; *Pease v. Smith*, 24 Pick. 122; *Hall v. Cushing*, 2 Greenl. 218; and see *State v. Board of Equal.*, 108 Mo. 235; *Taber v. Wilson*, 34 Mo. App. 89; *Scott v. Watkins*, 22 Ark. 566; *Day v. Peasley*, 54 Vt. 310. Where a collector of taxes files his bond within the statutory period, an acceptance of it after that period is valid and relates back to the time of filing: *Drew v. Morrill*, 62 N. H. 23. Acts done by a tax-collector under his warrant were held not void because done before he filed his bond, where the statute prescribing the time within which the bond should be filed was directory only: *Duntley v. Davis*, 42 Hun 229. As to requirement of bond from tax-collector, see *Board of Trustees v. Bardes* (Ky.), 8 S. W. Rep. 446;

Briggs v. Hopkins, 16 R. I. 83. A statute providing for the levy of a tax by school-district trustees was held void as a tax-law because not requiring either oath or bond for performance of duty by such trustees, and for other defects: *Kerr v. Woolley*, 3 Utah 456.

¹ *Lord Dacre's Case*, 1 Leon. 288; *Margate Pier v. Hannam*, 3 B. & Ald. 266; *Wilcox v. Smith*, 5 Wend. 231; *People v. Kane*, 23 Wend. 414; *People v. White*, 24 Wend. 520; *Brown v. Lunt*, 37 Me. 423; *Taylor v. Skrine*, 2 Brev. 516; *Mallett v. Uncle Sam Co.*, 1 Nev. 188; *Clark v. Commonwealth*, 29 Pa. St. 129; *Laver v. McGlachlin*, 28 Wis. 364; *In re Griffin*, 2 Am. Law Times 93.

² *Ronkendorf v. Taylor*, 4 Pet. 349; *Scott v. Watkins*, 22 Ark. 556; *Twombly v. Kimbrough*, 24 Ark. 459, 474; *School Dist. v. Board of Imp.*, 65 Ark. 343; *Samuels v. Drainage Com'rs*, 125 Ill. 256; *Washington v. Miller*, 14 Iowa 584; *Allen v. Armstrong*, 16 Iowa 515; *Watkins v. Inge*, 24 Kan. 612; *Ritchie v. Mulvane*, 39 Kan. 216, 241; *Jones v. Scanland*, 6 Humph. 195; *Hale v. Cushing*, 2 Greenl. 218; *Ray v. Murdock*, 36 Miss. 692; *Tucker v. Aiken*, 7 N. H. 113; *Smith v. Messer*, 17 N. H. 420; *State v. Pierson*, 47 N. J. L. 247; *State v. Brown*, 53 N. J. L. 162; *Sheldon v. Coates*, 10 Ohio St. 278; *Adams v. Jackson*, 2 Aiken 145; *Spear v. Ditty*,

Estoppel against intruders who have acted. The rule which supports official action may, perhaps, in some cases be carried with propriety even farther than is above stated. If one has assumed to act as an officer under revenue laws, and has made collections as such, he cannot be permitted, when the government calls upon him for an accounting, to turn about and say that he was never elected or appointed, but has acted as a mere usurper without right, and that the proper remedy of the government was to have resisted his intrusion, or caused his ouster. On every principle of right and justice he is precluded from denying his official character under such circum-

8 Vt. 419; *Downer v. Woodbury*, 19 Vt. 329. It was held in *Greene v. Walker*, 63 Me. 311, that the treasurer's being only an officer *de facto* when the tax was laid was no defense to a tax-sale. Where certain territory constituted *de facto* but not *de jure* a part of a city, the city assessor became and was the assessor *de facto* for that territory, and the state, county, and school district taxes were valid to the extent that they were recoverable in ejectment brought by the original owner wherein a tax-deed for such taxes, including the void city taxes, was set aside: *Ritchie v. Mulvane*, 39 Kan. 216, 241. There being an office of drain commissioners, and petitioners having assumed the duties of such office, and now acting as commissioners of the drainage district, they are *de facto* officers, and their acts will be upheld: *Samuels v. Drainage Com'rs*, 125 Ill. 256. Where the tax-list for collection of an assessment is delivered to the duly elected sewer-district collector for collection, he is a collector *de facto*, though suits are pending as to the right of collection of such taxes: *School Dist. v. Board of Imp.*, 65 Ark. 343. Taxes paid to a county treasurer upon property situated in a part of the county, which, since the assessment of such

taxes and before they became due had been organized into a separate county, are recoverable as a payment made to a public officer under color of his office whose authority to receive it had ceased: *Fremont, E. & M. V. R. Co. v. Holt County*, 28 Neb. 742. A sale for taxes cannot be enjoined on the ground that defendant was not a lawful tax-collector because the county commissioners, in violation of law, allowed him to receive from them the tax-list without his having settled for the taxes of the previous year: *McDonald v. Teague*, 119 N. C. 604. A tax execution issued by a tax-collector after he goes out of office is not legal process, and any sale of property thereunder is a mere nullity; but if the collector's official term had expired, his successor, however, not having qualified, he would still be in office so long as he acted officially: *Skinner v. Roberts*, 92 Ga. 366. One employed by a city to assist its assessor of taxes in the performance of his duties, and who does not claim to be and is not recognized as an officer of the city, but is merely an employee to assist the assessor, is not an officer *de facto* of said city, whose acts as such, in making an assessment of taxes in which the rightful assessor did not participate, will be binding:

stances.¹ Such a person has a right at any time to refuse to proceed farther in official action, and if he should do so, he could not be held responsible as for a neglect of duty in such refusal; but it is doubtful if one under any circumstances, even though he be a mere usurper, who has collected revenue for the government under claim of right, can be permitted to protect himself against an accounting, by showing that he was an intruder without any just pretense to the place. To the extent that he has acted, the government may properly adopt his agency, and require him to give to taxpayers, who have recognized his authority, the benefit of their payments.²

Action by official boards. In some cases, under the tax laws, official action is required to be taken by a board composed of several persons. It may then appear that there has been an impossibility to secure concurrence, or that, through

Tampa v. Kaunitz, 39 Fla. 683. And the attempted assessment by a deputy appointed without statutory authority is absolutely void, and no tax can be predicated thereon: *Farrington v. New England Inv. Co.*, 1 N. D. 102.

¹*Johnson v. Wilson*, 2 N. H. 202, 206; *Horn v. Whittaker*, 6 N. H. 88; *Pittsburg v. Danforth*, 56 N. H. 272; *Northumberland v. Cobleigh*, 59 N. H. 250; *Nason v. Fowler* (N. H.), 47 Atl. Rep. 263; *Billingsley v. State*, 14 Md. 369; *Sandwich v. Fish*, 2 Gray 298, 301; *Barrington v. Austin*, 8 Gray 444; *Wendell v. Fleming*, 8 Gray 613; *Cheshire v. Howland*, 13 Gray 321; *Williamstown v. Willis*, 15 Gray 427; *Lincoln v. Chapin*, 132 Mass. 470; *Jones v. Scanland*, 6 Humph. 195; *Borden v. Houston*, 2 Tex. 594. A tax-collector cannot justify his refusal to pay over the receipts to the officers appointed to receive them by a claim that the act creating the district in which the taxes were levied is unconstitutional: *Street Lighting Dist. v. Drummond*, 63 N. J. L. 493.

²*Bell v. Railroad Co.*, 4 Wall. 598; *United States v. Maurice*, 2 Brock. 96; *State v. Cunningham*, 8 Blackf. 339; *Church v. Sterling*, 16 Conn. 387; *Trescott v. Moan*, 50 Me. 347; *Wentworth v. Gove*, 45 N. H. 160; *Pittsburg v. Danforth*, 56 N. H. 272; *Northumberland v. Cobleigh*, 59 N. H. 250; *Nason v. Fowler* (N. H.), 47 Atl. Rep. 263; *Street Lighting Dist. v. Drummond*, 63 N. J. L. 493; *Commonwealth v. Philadelphia*, 27 Pa. St. 497. A sheriff who has collected taxes without the proper lists is nevertheless liable to account: *Governor v. Montgomery*, 2 Swan 613; see *Lincoln v. Chapin*, 132 Mass. 470. Cases of sale of the office of collector and the effect thereof are found in *Meredith v. Ladd*, 2 N. H. 517; *Carleton v. Witcher*, 5 N. H. 196; *Tucker v. Aiken*, 7 N. H. 113; *Alvord v. Collin*, 20 Pick. 418; *Spencer v. Jones*, 6 Gray 502; *Howard v. Proctor*, 7 Gray 128; and as to a collector's right to contest the validity of a tax he has collected, see *People v. Brown*, 55 N. Y. 180.

neglect or inadvertence, less than the whole board has acted; and it sometimes becomes necessary to determine whether, in any such case, the action can be supported. The rules of law on this subject are well settled. The law contemplates that all the members of the board, who are to exercise a joint public authority, shall meet to consider the subject of their authority, and that the whole board shall have the benefit of the judgment and advice of each of the members.¹ In revenue cases, especially, and in others in which the official action may eventuate in divesting the citizen of his estate, it is to be supposed the law intended that this joint deliberation and action should be for the benefit of the citizen also. If, therefore, no such meeting is held, and no opportunity had for joint consultation and action, the joint authority is not well executed, even though all acting separately may have signed such a document as would have been sufficient were it the result of a proper meeting. Such action is not the action of the board, but of individuals. It is always presumable that it might have been different had there been a meeting and comparison of views, such as the law contemplated. At any rate there can be no conclusive or satisfactory evidence of what would have been the joint judgment, when it has never been exercised; and the members of the board have no discretion to substitute individual action when the law has required the action of the organized body.² No custom of the locality, or long continued practice,

¹ See *post*, ch. XII.

² See *Downing v. Rugar*, 21 Wend. 178, 182, per *Cowan, J.*; *Lee v. Perry*, 4 Denio 125; *Powell v. Tuttle*, 3 N. Y. 396; *People v. Supervisors*, 11 N. Y. 563; *Columbus, etc. R. Co. v. Grant County*, 65 Ind. 427; *Fuller v. Gould*, 20 Vt. 643. If only two of a board of three qualify and act there is no board and the action is void: *Schenck v. Peay*, 1 Dill. 267, 1 Woolw. 175; *Machiasport v. Small*, 77 Me. 109. An assessment made by two persons legally chosen and sworn, and another person chosen and sworn as a selectman only, is void: *Jordan v. Hopkins*, 85 Me. 159. If only two of a board of three

are chosen the two cannot act: *Williamsburg v. Lord*, 51 Me. 599; and see *Downing v. Rugar*, 21 Wend. 178, 182. A tax is void where it was extended not by or under the direction of the county board of supervisors, but by each individual supervisor after the final adjournment of the board: *People v. Wemple*, 67 Hun 495. An assessment by a single assessor without the action or concurrence of a majority of the board of assessors, as required by law, is fatally defective: *Oteri v. Parker*, 42 La. An. 374. In the absence of any showing it will be presumed that a board met on the appointed day, and that they had before them

can sanction a dispensation of this rule of law. The members of the board are officers of law, and must obey the rules that presumably, for beneficial purposes, have been prescribed for them.¹ But the law does not require impossibility, and it may be found impossible for the members to agree in joint action. In such a case it is to be presumed that the intent was that the law should not fail of execution, but that the action of the majority should be sufficient. And, where a majority have acted, the legal intendment in favor of the correctness of official action requires us to conclude that such action is the result of due meeting and consultation, or at least of a meeting duly called, at which all had the opportunity to attend, and a majority did attend. It is therefore *prima facie* valid,² though the legal

the books, etc., necessary to enable them to perform their duties: *Snell v. Fort Dodge*, 45 Iowa 564. If an assessment may be made by the mayor and aldermen its validity is not affected by the fact that they call in another person to assist them in making it: *Collins v. Holyoke*, 146 Mass. 298. The acts of a majority of a state board of equalization are not invalidated because one not a member sat with them: *Carroll v. Alsup* (Tenn.), 64 S. W. Rep. 193. Evidence held to show that the assessment of each district of a parish was subjected within the requirements of law to the action of the parish board of assessors: *Oteri v. Parker*, 42 La. An. 374.

¹In *Middleton v. Berlin*, 18 Conn. 189, a tax-list was signed by one only of a board of five assessors. An attempt was made to support it by showing a usage of the town to divide the town into districts, in each of which one of the assessors acted separately; but the court said, "assessors are the officers of the law, and must obey the law, and no direction of the town, or long-continued usage, can justify a departure from the law." See, also, *Belfast Savings Bank v. Kennebec, etc. L. Co.*, 73 Me. 404; *People v. Chenango Super-*

visors, 11 N. Y. 563. In *Kinney v. Doe*, 8 Blackf. 350, the list was made by the official lister, but it was not shown that two householders acted with him as the law required, and it was held void.

²In support of the general principle that the action of a majority is sufficient, see *Wadham College*, Cowp. 377; *Grindley v. Barker*, 1 B. & P. 236; *The King v. Beester*, 3 T. R. 592; *Withnell v. Gartham*, 6 T. R. 388; *Cooley v. O'Conner*, 12 Wall. 391, 398; *Caldwell v. Harrison*, 11 Ala. 755; *People v. Coghill*, 47 Cal. 361; *People v. Lothrop*, 3 Colo. 428; *Hill v. Vanderpool*, 15 Fla. 128; *Billings v. Starke*, 15 Fla. 297; *Chicago & N. W. R. Co. v. People*, 173 Ill. 617; *Gage v. Chicago* (Ill.), 61 N. E. Rep. 848; *Johnson v. Goodridge*, 15 Me. 29; *Bangor v. Lancey*, 21 Me. 472; *Lowe v. Weld*, 52 Me. 588; *Sprague v. Bailey*, 19 Pick. 436; *Williams v. School Dist.*, 21 Pick. 75; *Fire Dist. v. County Com'rs*, 108 Mass. 142; *Mills v. Richland T'p*, 72 Mich. 100; *Serrell v. Patterson*, 107 Mich. 234; *Jewett v. Alton*, 7 N. H. 253; *Drew v. Morrill*, 62 N. H. 23; *Babcock v. Lamb*, 1 Cow. 238; *Ex parte Rogers*, 7 Cow. 526; *McCoy v. Curtice*, 9 Wend. 17, 19; *Downing v. Rugar*, 21 Wend. 178; *Crocker v. Crane*, 21 Wend. 211, 218;

presumption in its favor may be overcome by evidence that no such meeting was called or had.¹ Where, however, the statute requires joint action by three officers, action by two only cannot be sustained.²

Officer's duty to act. A purely ministerial officer is not authorized to omit the performance of a statutory duty because he deems proceedings by other officers irregular,³ or because of any custom in his office;⁴ nor is it proper for him to refuse to

Doughty v. Hope, 3 Denio 594; Chennango Bank v. Brown, 26 N. Y. 467; Merriam's Petition, 84 N. Y. 596; Commonwealth v. Land Com'rs, 9 Watts 466, 471; Ferris v. Kemble, 75 Tex. 476; Bundy v. Wolcott, 59 Vt. 157; Soens v. Racine, 10 Wis. 271; State v. Gaylord, 73 Wis. 316; State v. Lippels (Wis.), 87 N. W. Rep. 1093. Under these decisions it is difficult to understand how Howard v. Proctor, 7 Gray 128, can be supported. There, one who was selectman, and also assessor, was chosen collector, and it was decided that the choice was valid, though his bond was to be approved by the selectmen, and the assessors, in certain cases, had authority to remove him. The decision was put on the ground that these boards might act as majorities, but the very nature of the action was such as to preclude one member of the board from consultation and action with the rest, or, if he could act, made him interested adversely to the public. See, also, Fox v. Fox, 24 Ohio St. 335. Kinyon v. Duchene, 21 Mich. 498, is *contra*.

¹ Doughty v. Hope, 3 Denio 594, 598, per Bronson, J.; Ex parte Baltimore Turnpike Co., 5 Binn. 481.

² People v. Coghill, 47 Cal. 361; McClesney v. People, 148 Ill. 221; Adcock v. Chicago, 160 Ill. 611; Harrison v. Chicago, 163 Ill. 129; Moore v. Mattoon, 163 Ill. 622; Larson v. People, 170 Ill. 93; Hinkle v. Mattoon, 170 Ill. 316; Markley v. Chicago, 170

Ill. 358; Phelps v. Mattoon, 177 Ill. 169. Compare Palmer v. Downey, 2 Johns. Cases 346. The Illinois cases are explained in Gage v. Chicago (Ill.), 61 N. E. Rep. 849.

³ A county treasurer is not clothed with judicial power to pass upon the regularity of tax proceedings, and he cannot refuse to receive and file reports of delinquent taxes returned to him by a city treasurer in pursuance of the city's charter: Jackson v. County Treasurer, 117 Mich. 305. It is not an officer's province to omit a statutory duty because he conceives that the action of his superiors has not conformed to the law: State Tax Com'rs v. Quinn, 125 Mich. 128. Where, in the exercise of its lawful authority, a board of supervisors has ordered an assessment for a drain to be spread upon the rolls, a supervisor may not refuse so to spread such assessment merely because he thinks the proceedings have been irregular: Scholtz v. Smith, 119 Mich. 634. The fact that it appears to the county auditor that the levy by the county commissioners is sufficient for special purposes, and that a levy by the township trustee is unnecessary, furnishes no ground for his refusal to make an assessment: Cole v. State, 131 Ind. 591.

⁴ The failure of a county auditor to assess a school tax directed by a school trustee cannot be excused by any custom in the auditor's office; his duties, as well as those of the

extend a tax as directed by a statute which has long been acquiesced in and the procedure under which has become fixed, but the constitutionality of which he questions.¹ And the state is not to be deprived of its revenues because of official inertness or mistake.² Public policy also forbids the application to the state of the doctrine of estoppel growing out of the conduct and representations of its officers.³

Official returns and certificates. It is a general rule that the returns and certificates required of an officer in the performance of official duty are to be taken, in the proceeding in which they are made, as of unquestionable verity. They are not to be attacked, and proof entered into in a collateral proceeding, to which the officer is not a party, to show that they are false.⁴ The rule is not universal; and the case of a return

trustee, being prescribed by law: *Cole v. State*, 131 Ind. 591.

¹ *People v. Ames*, 24 Colo. 422.

² The state does not forfeit rights by the inertness of its officers in collecting taxes: *North Carolina R. Co. v. Alamance Com'rs*, 82 N. C. 259. A tax-collector's failure, through mistake, to collect all that is due, cannot deprive the public of its lien for taxes: *Johnson v. Finley*, 54 Neb. 573. A debt due the state cannot be canceled by an officer's inaction; as where the railroad commissioner failed to compute the amount of tax due from a particular railroad: *Manistee, etc. R. Co. v. Auditor-General*, 115 Mich. 291. Where the state's attorney-general informs the auditor-general that a corporation is not liable to a certain tax, and the tax is therefore not assessed, the error, if any, is due not to a mistake in computation by the auditor, but to a mistake in the law by the attorney-general, and the doctrine that the state shall not suffer for the laches of its agents has no application: *Commonwealth v. Pennsylvania Co.*, 145 Pa. St. 266.

³ *People v. Brown*, 67 Ill. 435. In

this case the creditor, when applied to by a collector's sureties, gave them, through mistake, an incorrect statement of the collector's account, which prevented them from obtaining indemnity; and it was held that such mistaken statement could not estop the state, in a suit upon the collector's bond against such sureties, from recovering the true amount due the state. Where a person purchased land relying upon the fact, as evidenced by a receipt from the proper officer, of the payment of taxes levied thereon, which taxes it appeared afterwards had not been paid, it was held on an application for an injunction that the doctrine of estoppel did not apply, and the injunction was denied: *Kuhl v. Mayor*, 23 N. J. Eq. 84. And in *Philadelphia Mortg. & T. Co. v. Omaha (Neb.)*, 88 N. W. Rep. 523, the doctrine of equitable estoppel was held not to apply as against a municipality so as to preclude it from collecting taxes marked "Paid" by an employee's mistake.

⁴ *Com. Dig., Return, G.*; *Flud v. Pennington*, Cro. Eliz. 872; *Harrington v. Taylor*, 17 East 378; *Rex v. Elkins*, 4 Burr. 2129; *Andrews v. Lin-*

by a collector of the non-payment of a tax to him is an important exception. It is generally held that the taxpayer may show, in opposition to the return, that the tax was paid in fact, and that he may make this showing in any proceeding against him or his property upon it.¹ And in any case if a false official return is prejudicial to a party, he has his remedy by action against the officer.²

ton, 1 Salk. 265; *Wheeler v. Lampman*, 14 Johns. 481, 482; *Putnam v. Man*, 3 Wend. 292; *Case v. Redfield*, 7 Wend. 398; *Boomer v. Laine*, 10 Wend. 525; *Baker v. McDuffie*, 23 Wend. 289; *Sperling v. Levy*, 1 Daly 95, 98; *McArthur v. Pease*, 46 Barb. 423; *Livermore v. Bagley*, 3 Mass. 487, 512; *Slayton v. Chester*, 4 Mass. 478; *Gardner v. Hosmer*, 6 Mass. 324, 327; *Bott v. Burnell*, 9 Mass. 96; *Estabrook v. Hapgood*, 10 Mass. 313, 314; *Bott v. Burnell*, 11 Mass. 163; *Saxton v. Nimms*, 14 Mass. 313, 320; *Bean v. Parker*, 17 Mass. 591, 601; *Lawrence v. Pond*, 17 Mass. 433; *Thayer v. Stearns*, 1 Pick. 109, 112; *Whittaker v. Sumner*, 7 Pick. 551, 555; *Boynton v. Willard*, 10 Pick. 165, 169; *Bruce v. Holden*, 21 Pick. 187, 189; *Pullen v. Haynes*, 11 Gray 379; *Campbell v. Webster*, 15 Gray 28; *McGough v. Wellington*, 6 Allen 505; *Hathaway v. Phelps*, 2 Aiken 84; *Stevens v. Brown*, 3 Vt. 420; *Eastman v. Curtis*, 4 Vt. 616; *Barret v. Copeland*, 18 Vt. 67, 69; *White River Bank v. Downer*, 29 Vt. 332; *Lewis v. Blair*, 1 N. H. 68; *Whiting v. Bradley*, 2 N. H. 79, 81; *Sias v. Badger*, 6 N. H. 393; *Brown v. Davis*, 9 N. H. 76; *Angier v. Ash*, 26 N. H. 99; *Clough v. Monroe*, 34 N. H. 381; *Ladd v. Wiggins*, 35 N. H. 421; *Bolles v. Bowen*, 45 N. H. 124; *Morse v. Smith*, 47 N. H. 474; *Phillips v. Elwell*, 14 Ohio St. 240; *Eastman v. Bennett*, 6 Wis. 232; *Carr v. Commercial Bank*, 16 Wis. 50; *Blanchard v. Powers*, 42 Mich. 619; *Gamble v. East Saginaw*, 43 Mich. 367; *Tompkins v. Johnston*, 75 Mich. 181; *Cast-*

ner v. Symonds, 1 Minn. 427; *Tullis v. Brawley*, 3 Minn. 277; *Folsom v. Carli*, 5 Minn. 333; *Delenger v. Higgins*, 26 Mo. 180; *McDonald v. Lee-wright*, 31 Mo. 29; *Reeves v. Reeves*, 33 Mo. 28; *Stewart v. Stringer*, 44 Mo. 400; *Washington, etc. Co. v. Kin-near*, 1 Wash. Ter. 116; *Tillman v. Davis*, 28 Ga. 494; *Brown v. Way*, 28 Ga. 531; *Allender v. Riston*, 2 Gill & J. 86; *Tribble v. Frame*, 3 T. B. Monr. 51; *Caldwells v. Harlan*, 3 T. B. Monr. 349; *McConnel v. Bowdry's Heirs*, 4 T. B. Monr. 392; *Smith v. Hornback*, 3 A. K. Marsh. 378; *Small v. Hagden*, 1 Litt. 16; *Trigg v. Lewis' Ex'rs*, 3 Litt. 129, 132; *Hunter v. Kirk*, 4 Hawks 277; *Stinson v. Snow*, 1 Fairf. 263; *Wilson v. Hurst's Ex'rs*, 1 Pet. C. C. 441; *Hawks v. Baldwin*, *Brayt*. 85; *Welsh v. Bell*, 32 Pa. St. 12; *Pax-on's Appeal*, 49 Pa. St. 195; *Hill v. Grant*, 49 Pa. St. 200; *Rice v. Groff*, 58 Pa. St. 116; *Ayres v. Duprey*, 27 Texas 593; *Angell v. Bowler*, 3 R. I. 77; *Castner v. Styer*, 23 N. J. L. 236; *State v. Clerk of Bergen*, 25 N. J. L. 209; *Martin v. Barney*, 20 Ala. 369; *Crow v. Hudson*, 21 Ala. 560; *Hinckley v. Buchanan*, 5 Cal. 53; *Gaither v. Green*, 40 La. An. 362.

¹ See ch. XIV.

² *Wheeler v. Lampman*, 14 Johns. 481; *Putnam v. Man*, 3 Wend. 292; *Case v. Redfield*, 7 Wend. 398; *Baker v. McDuffie*, 23 Wend. 289; *McArthur v. Pease*, 46 Barb. 423; *Livermore v. Bagley*, 3 Mass. 487, 512; *Slayton v. Chester*, 4 Mass. 478; *Gardner v. Hosmer*, 6 Mass. 324, 327; *Whittaker v. Sumner*, 7 Pick. 551; *Boynton v. Wil-*

In general it is believed that these rules have been held to be applicable in tax cases.¹ In a number of cases the courts have gone so far as to hold that where, as a condition to a sale of land for taxes, the officer must show by his return that he was unable to find goods or chattels from which to make the tax, his return to that effect might be disproved, and the subsequent proceedings for a sale of the land defeated by such showing. The point is one of no little difficulty, and there is ground for difference of opinion upon it.²

lard, 10 Pick. 165, 169; Bruce v. Holden, 21 Pick. 187, 189; Pullen v. Haynes, 11 Gray 379; Campbell v. Webster, 15 Gray 28; McGough v. Wellington, 6 Allen 505; Clough v. Monroe, 34 N. H. 381; Lewis v. Blair, 1 N. H. 68; Sias v. Badger, 6 N. H. 393; Angier v. Ash, 26 N. H. 99; Bolles v. Bowen, 45 N. H. 124; Tomlinson v. Long, 8 Jones L. 469; Albright v. Tapscott, 8 Jones L. 473; McBee v. State, 1 Meigs 122; Castner v. Symonds, 1 Minn. 427; Folsom v. Carli, 5 Minn. 333; Goodal v. Stewart, 2 Hen. & Munf. 105, 112; Triggs v. Lewis' Ex'rs, 3 Litt. 129, 132; Hunter v. Kirk, 4 Hawks 277; Stinson v. Snow, 1 Fairf. 263; Phillips v. Ewell, 14 Ohio St. 240; McDonald v. Lee-wright, 31 Mo. 29; Stewart v. Stringer, 41 Mo. 400; State v. Clerk of Bergen, 25 N. J. L. 209; Mentz v. Hamman, 5 Whart. 150; Paxon's Appeal, 49 Pa. St. 195; Eastman v. Bennett, 6 Wis. 232; Blanchard v. Powers, 42 Mich. 619; Gamble v. East Saginaw, 43 Mich. 367.

¹ There are cases which hold official returns of ministerial officers to be only *prima facie* evidence of facts recited: Cockrell v. Smith, 1 La. An. 1; Waddell v. Judson, 12 La. An. 13; Leverich v. Adams, 15 La. An. 310; Wallis v. Bourg, 16 La. An. 176; Newton v. Prather, 1 Duv. 100; Fleece v. Goodrum, 1 Duv. 306; Kingsbury v. Buchanan, 11 Iowa 387; Pomeroy v. Parmelee, 9 Iowa 140, 150; Owens v. Ranstead, 22 Ill. 161, 167; Rivard v.

Gardner, 39 Ill. 125, 129; Gregg v. Strange, 3 Ind. 366; Doe v. Attica, 7 Ind. 641; Butler v. State, 20 Ind. 169; Tucker v. Bond, 23 Ark. 268; Ingraham v. McGraw, 3 Kan. 521. In Lothrop v. Ide, 13 Gray 93, a collector sued for arresting a person on a tax warrant relied upon his return as showing that the party had no goods on which to levy, but the plaintiff was allowed to give evidence that he offered to turn out goods in satisfaction of the tax; and on exceptions the decision was sustained, the cases of Pickard v. Howe, 12 Met. 207; Bruce v. Holden, 21 Pick. 187, and Barnard v. Graves, 13 Met. 85, being cited. A court of equity is not estopped, because of the certificate attached to an assessment roll, from inquiring into the facts on which such roll is based: New Whatcom v. Bellingham Bay Imp. Co., 9 Wash. 639. The record of a board of equalization is not conclusive, but is only *prima facie* evidence, in a taxpayer's action challenging the legality of a tax or assessment: Hagerty v. Huddleston, 60 Ohio St. 149. The presumptions in favor of the certificate of a tax collector to an assessment roll apply in Louisiana only where the owner is notified by publication: Montgomery v. Marydale, etc. Co., 46 La. An. 403.

² Scales v. Alvis, 12 Ala. 617, citing Jackson v. Shepard, 7 Cow. 88; Andrews v. People, 75 Ill. 605. The report held to be *prima facie* evidence

Presumption of correct action. The general presumption that public officers have regularly performed their duties applies to official action in tax matters,¹ although it cannot estab-

only: *Chiniquy v. People*, 78 Ill. 570; *Mix v. People*, 81 Ill. 118; *Pike v. People*, 84 Ill. 80. In Indiana it is said the personal property must be first levied on and exhausted, provided it is of such a nature and so situated that the treasurer, by the exercise of reasonable diligence, can levy upon it and make the amount of the taxes: *Volger v. Sidener*, 86 Ind. 545; *Logansport v. Carroll*, 95 Ind. 156; see *Bowen v. Donovan*, 32 Ind. 379. That a sale of land is illegal if the owner has personalty in the county from which the taxes can be made: *Schrodt v. Deputy*, 88 Ind. 90; *Sharp v. Dillman*, 77 Ind. 280; *McWhinney v. Brinker*, 64 Ind. 360; *Hannah v. Collins*, 94 Ind. 201. And it would seem that the tax purchaser must take the affirmative of showing that there were no goods subject to distress: *Earle v. Simonds*, 94 Ind. 573. But if suit is brought against the officer for selling real estate when personalty was within reach, the complaint must show the character of the personalty, and that it was subject to seizure and sale: *Bunnell v. Farris*, 82 Ind. 393. In Nebraska it has been held that a sale of land for taxes where there was sufficient personal property of the delinquent in the county out of which to make the tax was absolutely void: *Wilhelm v. Russell*, 8 Neb. 120; *Pettit v. Black*, 8 Neb. 59; *Miller v. Hurford*, 13 Neb. 13. This seems to have been changed by statute in 1877. See 8 Neb. 120, note. In Mississippi it is held that a tax deed cannot be invalidated by showing that there was personalty from which the tax might have been made, or that no demand was made for payment: *Bell v. Coats*, 54 Miss. 538; *Virden v. Bowers*, 55 Miss. 1.

¹ Tax assessments made in the line of official duty are entitled to the usual presumption of correctness which attends the acts of public officers: *State v. Kidd*, 125 Ala. 413. The presumption that official action is regular and honest is not wholly inapplicable to a supervisor's action in assessing property for taxation: *Mills v. Richland T'p*, 72 Mich. 100. The law presumes that a taxing officer on whom is imposed a specific duty has regularly performed it; for example, that an assessment list was taken by the required officer: *Pentecost v. Stiles*, 5 Okl. 500. It is presumed that the taxing authorities in making an assessment and levy for general purposes proceeded according to law, and discharged with fidelity the duties imposed upon them: *Adams v. Osgood* (Neb.), 84 N. W. Rep. 257. Taxes upon the duplicate are presumed to have been placed there by the proper officer: *Adams v. Davis*, 109 Ind. 10. Assessors are presumed to have done their duty in omitting lands: *Perkins v. Nugent*, 45 Mich. 156; and in assessing together contiguous lots owned by the same person: *Pettibone v. Fitzgerald* (Neb.), 88 N. W. Rep. 143; and in allowing a statutory exemption: *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406. In the absence of anything to the contrary it is presumed that each tax-gathering officer has performed his duty in the manner required by statute: *Bennett v. Darling* (S. D.), 86 N. W. Rep. 751. Public officers in assessing benefits for opening a street are presumed to have done their duty: *Grand Rapids S. F. Co. v. Grand Rapids*, 92 Mich. 564. In the absence of evidence to the contrary it

lish jurisdictional facts;¹ nor, irrespective of statute, can that presumption exclude the necessity of showing that every step required by law leading up to a sale of the property for taxes has been taken.² And this presumption, like others, is never admissible when better evidence of a primary nature is required to be preserved.³

will be presumed, in proceedings to have taxes declared invalid on account of the action of a board of county commissioners, that the board performed its duty: *Henderson v. Hughes County*, 13 S. D. 576. The acts of an assessor and of city authorities who have levied a tax are presumed to be valid until the contrary appears: *Eureka Hill Mining Co. v. Eureka (Utah)*, 63 Pac. Rep. 654. A levy by the county court of a tax to pay township funding bonds gives rise to the presumption that a preliminary order had been obtained previously from the circuit court directing the county court to pay the tax as provided by the statute: *State v. Hannibal & St. J. R. Co.*, 101 Mo. 136. The presumption in all proceedings relating to taxes is in favor of regularity: *Chamberlain v. St. Ignace*, 92 Mich. 332. And see, further, on this subject, *Fanning v. Bohme*, 76 Cal. 149; *Hogelskamp v. Weeks*, 37 Mich. 422; *Stockle v. Silsbee*, 41 Mich. 615; *Hunt v. Chapin*, 42 Mich. 24; *Silsbee v. Stockle*, 44 Mich. 561; *Dickison v. Reynolds*, 48 Mich. 158; *Drennan v. Beierlein*,

49 Mich. 272; *Pearsall v. Eaton Supervisors*, 71 Mich. 438; *Newkirk v. Fisher*, 72 Mich. 113; *Muskegon v. Martin Lumber Co.*, 86 Mich. 625; *Auditor-General v. Maier*, 95 Mich. 127; *Auditor-General v. Hill*, 97 Mich. 80; *Benedict v. Auditor-General*, 104 Mich. 629; *Hoffman v. Lynburn*, 104 Mich. 494; *Auditor-General v. Ayer*, 109 Mich. 694; *Auditor-General v. Longyear*, 110 Mich. 223; *Auditor-General v. Sparrow*, 116 Mich. 574; *State v. Hannibal & St. J. R. Co.*, 101 Mo. 120; *State v. Hoyt*, 123 Mo. 348. And see, also, *post*, chs. X and XV.

¹ *Cleveland, C., C. & St. L. R. Co. v. Randle*, 183 Ill. 364.

² *Keane v. Cannovan*, 21 Cal. 291. And see *post*, ch. XV.

³ *Muskegon v. Martin Lumber Co.*, 86 Mich. 625, citing *People v. Treadway*, 17 Mich. 470. See, also, *Mills v. Richland T'p*, 72 Mich. 100. The presumption of right official action does not aid records which do not contain what is essential to the validity of the proceedings, and which, being in evidence, must speak for themselves: *Harding v. Bader*, 75 Mich. 316.

CHAPTER IX.

THE CONSTRUCTION OF TAX LAWS.

In the administration of the laws for the collection of the public revenue, it is in the first instance necessary that we ascertain the legislative intent in their several provisions,¹ and next that we give effect to that intent in applying it to the subject-matter with which we have to deal. In doing this we may sometimes make profitable use of certain rules of construction which we may find applied in adjudicated cases.

Rules of construction in general. Artificial rules of construction have probably found more favor with the courts than they have ever deserved. Their application in legal controversies has oftentimes been pushed to an extreme which has defeated the plain and manifest purpose in enacting the laws. Penal laws have sometimes had all their meaning construed away, and in remedial laws remedies have been found which the legislature never intended to give. Something akin to this has befallen the revenue laws. In some of the earlier cases they seem to have been looked upon as things which, like the obligations entered into with a usurer, were to be confined to the very letter of the bond, if enforced at all; and every intendment was made against them and against the proceedings under them. This is an evil which the legislature has endeavored to remedy, but in doing so it has often gone to the opposite extreme. It has passed statutes from time to time in the supposed exercise of a control over rules of evidence which, if literally construed and enforced, would be in the nature of judicial decrees, and would determine conclusively, against the person whose property has been seized for taxes, all such questions of law or right as he might raise in support of his inheritance. It is difficult to determine which is more reasonable — the old

¹ *Pittsburg, C., C. & St. L. R. Co. v. Mining Co. v. Auditor-General*, 37 Backus, 133 Ind. 625; *Herriott v. Mich.* 391.
Bacon, 110 Iowa 342; *Albany & B.*

strictness of some of the courts in dealing with tax proceedings, or the new strictness of some of the legislation which has been aimed at those who have had the misfortune to have their property seized under tax laws.

The intent to govern. The underlying principle of all construction is that the intent of the legislature should be sought in the words employed to express it, and that when found it should be made to govern, not only in all proceedings which are had under the law, but in all judicial controversies which bring those proceedings under review.¹ Beyond the words employed, if the meaning is plain and intelligible, neither officer nor court is to go in search of the legislative intent; but the legislature must be understood to intend what is plainly expressed, and nothing then remains but to give the intent effect.²

¹ *Linton v. Childs*, 105 Ga. 567.

² *United States v. Fisher*, 2 Cranch 358, 399; *Sturgis v. Crowninshield*, 4 Wheat. 122, 202; *Patterson v. Yuba*, 13 Cal. 175; *Cornwall v. Todd*, 38 Conn. 443; *Beardstown v. Virginia*, 76 Ill. 34; *German Alliance Ins. Co. v. Van Cleave* (Ill.), 61 N. E. Rep. 94; *Case v. Waldrige*, 4 Ind. 51; *Spencer v. State*, 5 Ind. 41, 49; *Evansville v. Summers*, 108 Ind. 189; *District T'p v. Dubuque*, 7 Iowa 262; *Deposit Bank v. Daveiss County*, 102 Ky. 174; *Alexander v. Worthington*, 5 Md. 471; *Cantwell v. Owens*, 14 Md. 215; *Smith v. Thursby*, 28 Md. 244; *Bidwell v. Whitaker*, 1 Mich. 479; *Hawkins v. Carroll*, 50 Miss. 735; *St. Louis, etc. R. Co. v. Clark*, 53 Mo. 214; *State v. Blaisdel*, 4 Nev. 241; *Ezekiel v. Dixon*, Kelly 146; *In re Murphy*, 23 N. J. L. 180; *People v. Purdy*, 2 Hill 31, 35, 4 Hill 384; *Newell v. People*, 7 N. Y. 9, 83; *McClusky v. Cromwell*, 11 N. Y. 593; *People v. New York Central R. Co.*, 24 N. Y. 485, 492; *In re Dobson*, 146 N. Y. 357; *In re Thrall's Estate*, 157 N. Y. 46; *People v. Dalton*, 158 N. Y. 175; *In re Huntington's Estate* (N. Y.), 61 N. E. Rep. 643; *Bartlett v. Morris*, 9 Port.

266; *McAdoo v. Benbow*, 63 N. C. 461, 464; *Ludlow's Heirs v. Johnson*, 3 Ohio 553; *Gold v. Fite*, 2 Baxt. 237; *Memphis v. Bing*, 94 Tenn. 644; *Slack v. Jacobs*, 8 W. Va. 612; *Mundt v. Railroad Co.*, 31 Wis. 451. Where a statute providing for the summary arrest of a defaulting collector authorized him to be released on giving bond after he had been committed to prison after his arrest, it was held that a bond taken without committing him to prison was not authorized: *Daggett v. Everett*, 19 Me. 373. Statutes relating to taxation are to be so construed as to carry into effect the obvious intent of the legislature, rather than to defeat that intent by a too strict adherence to the letter: *Cornwall v. Todd*, 38 Conn. 443; *Singer Manuf. Co. v. Wright*, 97 Ga. 114; *London, etc. Mortg. Co. v. Gibson*, 77 Minn. 394. The manifest intent and spirit of the act must be looked to; a statute taxing the property of white persons for the maintenance of a school for white pupils applies to corporations, unless their stockholders are blacks, the obvious meaning being that the burden is to fall on all property in the district

If the words of the law seem to be of doubtful import, it may then perhaps become necessary to look beyond them in order to ascertain what was in the legislative mind at the time the law was enacted; what the circumstances were, under which the action was taken; what evil, if any, was meant to be redressed; what was the leading object of the law, and what the subordinate and relatively unimportant objects. And where the law has contemporaneously been put into operation, and in doing so a construction has necessarily been put upon it, this construction, especially if followed for some considerable period, is entitled to great respect, as being very probably a true expression of the legislative purpose, and is not lightly to be overruled,¹ although it is not conclusive.²

except that of negroes: *Board of Trustees v. Bell County C. & I. Co.*, 96 Ky. 68; *Louisville & N. R. Co. v. Trustees (Ky.)*, 64 S. W. Rep. 974. Under a statute imposing taxation for levee purposes, an invalid assessment of lands for such purposes was not validated, since no purpose of the legislature to that end was shown by the act: *Mullins v. Shaw*, 77 Miss. 900.

¹ *Cooley, Const. Lim.* (5th ed.), p. 81; *People v. Knopf*, 171 Ill. 191; *State Board of Tax Com'rs v. Holliday*, 150 Ind. 216; *Commonwealth v. New York, L. E. & W. R. Co.*, 150 Pa. St. 234. Long legislative construction should be given great weight in determining the construction of a constitutional provision concerning taxation: *Hubbard v. Brush*, 61 Ohio St. 252. An amendatory statute making the exercise of a prior power of appointment a taxable transfer is entitled to consideration as a legislative declaration that before the amendment the exercise of such power was not taxable: *In re Harbeck*, 161 N. Y. 211. The plain construction of a statute cannot be affected by a joint resolution adopted ten years later from which it appears that the legislature which framed the resolution understood the act

differently: *Philadelphia, W. & B. R. Co. v. Neary*, 5 Del. Ch. 600. Great deference should be paid to the long prevailing construction of a tax law by the executive department of the state government: *Bloxham v. Consumers' E. L. & St. R. Co.*, 36 Fla. 519. Practical construction for 130 years in favor of a charter exemption from taxation should have great weight: *Brown Univ. v. Granger*, 19 R. I. 704. Where a statute authorizing a tax has been for a long time acquiesced in, and the precedent thereunder has become fixed, it would be dangerous to allow purely ministerial officers to question the constitutionality of the statute, and to refuse to extend the tax as required thereby: *People v. Ames*, 24 Colo. 422.

² *Petition of Manhattan Savings Inst.*, 82 N. Y. 142. The omission of state tax-officers in previous years to assess certain property cannot control the duty imposed by law upon their successors, or the legal construction of a statute under which the exemption thereof is claimed: *Lee v. Sturgis*, 46 Ohio St. 153; see *Vicksburg, etc. R. Co. v. Dennis*, 116 U. S. 665.

When extraneous facts and circumstances are thus resorted to with the object of ascertaining the true legislative meaning, rules of interpretation are very properly made use of, because these are supposed to be based in reason, and to have stood the tests of experience. Such rules are discussed with more or less fullness in the law treatises.¹ But rules of interpretation are not imperative like the mandatory provisions of law; they are rather in the nature of suggestions, leading up to the probable meaning where it has been carelessly or inartificially expressed; and where the words were susceptible of more than one interpretation, they may possibly guide us to the one intended. When, however, the intent is plain without them, they are worse than useless, because their tendency would then be to introduce doubts where none should exist.²

Construction of revenue laws. In the construction of the revenue laws,³ special consideration is of course to be had of the purpose for which they are enacted. That purpose is to supply the government with a revenue. But in the proceedings to obtain this it is also intended that no unnecessary injury shall be inflicted upon the individual taxed. While this is

¹ See Blackstone's Commentaries; the Treatises of Sedgwick and Smith; Dwarris on Statutes, with Potter's additions; Bishop on Statutory Crimes; Story on the Constitution; Cooley, Const. Lim., ch. IV.

² *Deposit Bank v. Daveiss County*, 102 Ky. 174; *Henshaw v. Foster*, 9 Pick. 312, 316; *Woodson v. Murdock*, 22 Wall. 351, 381. The general rule that laws exempting property from taxation are to be strictly construed does not govern where the enactment itself declares the rule of interpretation which shall be applied to it: *Brown Univ. v. Granger*, 19 R. I. 704.

³ As to what are revenue laws, see *Royall v. Virginia*, 116 U. S. 572; *Twin City National Bank v. Nebecker*, 167 U. S. 196; *Peyton v. Bliss*, 1 Woolw. 170; *United States v. James*, 13 Blatchf. 207; *The Nashville*, 4 Biss. 188; *Perry County v.*

Selma, etc. R. Co., 58 Ala. 546; *Ran-kin v. Louisville (Ky.)*, 7 S. W. Rep. 174; *Succession of Sala*, 50 La. An. 1009; *Succession of Givanovich*, 50 La. An. 625; *Opinions of Justices*, 126 Mass. 547, 557; *Curryer v. Merrill*, 25 Minn. 1. No law is to be considered a revenue law which undertakes to impose a burden not warranted by the general rules which underlie taxation: *Philadelphia Assoc. v. Wood*, 39 Pa. St. 73. A statute authorizing a tax which is fixed in its amount, or is assessed and collected by the instrumentality provided for it in the act, is, in effect, a statute "imposing a tax" on the person who is bound to pay it, whether it is laid directly or indirectly upon him, and it is in accordance with both correct and common usage so to employ the word: *Neary v. Philadelphia, W. & B. R. Co.*, 7 Houst. (Del.) 419.

secondary to the main object — the impelling occasion of the law — it is none the less a sacred duty. Care is taken in constitutions to insert provisions to secure the citizen against injustice in taxation, and all legislative action is entitled to the presumption that this has been intended. We are therefore at liberty to suppose that the two main objects had in view in framing the provisions of any tax law were, *first*, the providing a public revenue, and *second*, the securing of individuals against extortion and plunder under cover of the proceedings to collect the revenue. The provisions for these purposes are the important provisions of the law. Other provisions may be made for subordinate purposes; to encourage order, regularity, and promptitude in the proceedings, and to give to the government a security against losses and frauds beyond what might be had in the integrity of officers.

The question regarding the revenue laws has generally been whether or not they should be construed strictly. To express it in somewhat different language, the question is whether, when a question of doubt arises in the application of a statute to its subject-matter or supposed subject-matter, the doubt is not to be solved in favor of the citizen, rather than in favor of the state upon whose legislation the doubt arises, and whether such solution is not most in accord with the general principles applied in other cases. Strict construction is the general rule in the case of statutes which may divest one of his freehold by proceedings not in the ordinary sense judicial, and to which he is only an enforced party. It is thought to be only reasonable to intend that the legislature, in making provision for such proceedings, would take unusual care to make use of terms which would plainly express its meaning, in order that ministerial officers might not be left in doubt in the exercise of unusual powers, and that the citizen might know exactly what were his duties and liabilities. A strict construction in such cases seems reasonable, because presumptively the legislature has given in plain terms all the power it has intended should be exercised. It has been very generally supposed that the like strict construction was reasonable in the case of tax-laws.

“Statutes,” says a learned and able writer, “made for the advancement of trade and commerce, and to regulate the conduct of merchants, ought to be perfectly clear and intelligible

to persons of their description. By the use of ambiguous clauses in laws of that sort the legislature would be laying a snare for the subject, and a construction which conveys such an imputation ought never to be adopted. Judges, therefore, where clauses are obscure, will lean against forfeitures, leaving it to the legislature to correct the evil, if there be any. With this view, the ship registry acts, so far as they apply to defeat titles and to create forfeitures, are to be construed strictly as penal, and not liberally as remedial, laws. In like manner in the revenue laws, where clauses inflicting pains and penalties are ambiguously or obscurely worded, the interpretation is ever in favor of the subject; 'for this plain reason,' said *Heath, J.*, in *Hubbard v. Johnstone*, 'that the legislature is ever at hand to explain its own meaning, and to express more clearly what has been obscurely expressed.' The same author on another page says: "It is a well-settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language. Acts of parliament which impose a duty upon the public will be critically construed with reference to the particular language in which they are expressed. When there is any ambiguity found, the construction must be in favor of the public; because it is a general rule that when the public are to be charged with a burden, the intention of the legislature to impose that burden must be explicitly and distinctly shown."¹ This statement of the general rule expresses the view which it is believed has always prevailed in England.² It is also that

¹ *Dwarris on Statutes*, 742, 749. See *Treat v. White*, 181 U. S. 264; *Gomer v. Chaffee*, 6 Colo. 314; *State v. Green*, 126 N. C. 1032; *Pretzinger v. Sunderland*, 63 Ohio St. 132; *Board of Supervisors v. Tallant*, 96 Va. 723; *Brown v. Commonwealth*, 98 Va. 366.

² Quotations from a few cases may here be given. In *Warrington v. Furber*, 8 East 242, 245 (case of a stamp tax), Lord *Ellenborough*, Ch. J., says: "Where the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out, and we should give a liberal construction to words of exception confining the operation of the duty." In

Williams v. Sangar, 10 East 66, 69 (case of turnpike tolls), Lord *Ellenborough* says: "In the construction of these tax acts we must look at the strict words, however we may sometimes lament the generality of the expression used in them; but we must construe those words according to their plain meaning with reference to the subject-matter." In *Denn v. Diamond*, 4 B. & C. 244 (case of an *ad valorem* duty on sales), *Bayley, J.*, says: "It is a well settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language." It was therefore held that a conveyance in

which has been adopted in the several states.¹ Like views have been frequently expressed by the federal courts. Thus, Mr. Justice Story, in giving reasons for holding that the revenue act of 1841 did not intend to levy a certain permanent

consideration of natural love and affection was not taxable as a "sale." In *Tompkins v. Ashby*, 6 B. & C. 541, 543 (case of a stamp duty), Lord *Tenterden*, Ch. J., says: "Acts of parliament imposing duties are so to be construed as not to make any instruments liable to them unless manifestly within the intention of the legislature." In *Doe v. Snaith*, 8 Bing. 147, 152 (case of a stamp duty), *Tindal*, Ch. J., says: "As all stamp acts, being a burden on this subject, must be clearly expressed, wherever they impose the burden, I should say that even if there were doubt, we should take the smaller sum." In *Wroughton v. Turtle*, 11 Mees. & W. 561, 567, *Park*, B., says: "It is a well settled rule of law that every charge on the subject must be imposed by clear and unambiguous words." In *Marquis of Chandos v. Commissioners*, 6 Exch. 464, 479, *Pollock*, C. B., says: "It is a well established rule in the construction of revenue acts that a duty cannot be imposed on the subject except by clear words. The meaning of the legislature must be distinctly made out from the terms of the statute." In *Gurr v. Scudds*, 11 Exch. 190, 192, *Pollock*, C. B., says: "If there is any doubt as to the meaning of the stamp act it ought to be construed in favor of the subject, because a tax cannot be imposed without clear and express words for that purpose." The English cases are cited, and their doctrine approved, in *Green v. Holway*, 101 Mass. 243, 248.

¹ "Statutes which impose restrictions upon trade or common occupations, or which levy an excise or tax upon them, must be construed

strictly:" *Parker*, Ch. J., in *Sewell v. Jones*, 9 Pick. 412, 414. Statutes imposing taxes are to be construed strictly: *Pegues v. Ray*, 60 La. An. 574; *Dodge v. Love*, 49 N. J. L. 235; *Cincinnati v. Conner*, 55 Ohio St. 82. "A statute conferring authority to impose taxes must be construed strictly:" *Moseley v. Tift*, 4 Fla. 402, 403. "A strict construction of the tax law is fully warranted by the nature and consequences of the proceeding:" *Stuart*, J., in *Barnes v. Doe*, 4 Ind. 132, 133, citing *Williams v. State*, 6 Blackf. 36. The rule of strict construction is very strongly expressed in *Cahoon v. Coe*, 57 N. H. 557, and is there said to be "founded so firmly upon principles of equity and natural justice as not to admit of reasonable doubt." All matters of taxation are resolved in favor of the taxpayer, and express statutes should be found for each item of cost to be imposed upon him: *San Francisco & F. L. Co. v. Banbury*, 106 Cal. 129. Statutes exercising the power of taxation in any of its forms, or delegating that power to political subdivisions, must be strictly construed and closely pursued: *Barber Asphalt Paving Co. v. Watt*, 51 La. An. 1345. Laws imposing a license or a tax are strictly construed, and where there is doubt as to their meaning or scope they are construed more strongly against the government and in favor of the citizens: *Brown v. Commonwealth*, 98 Va. 366. A license law cannot be extended by construction, nor can a license not imposed by the words of the act be exacted; thus a bank with a capital less than the minimum expressed in the revenue license law cannot be required to pay a license-

duty on indigo, says: "My reasons for this conclusion are these: In the first place, it is, as I conceive, a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend their provisions, by implica-

fee: *State v. Bank of Mansfield*, 48 La. An. 1029. The provisions of statutes levying duties or taxes upon citizens are not to be extended by implication beyond the clear import of the language used. Whenever there is a just doubt, that doubt should absolve the taxpayer from his burden: *Board of Supervisors v. Tallant*, 96 Va. 723, citing *Planer Co. v. Flournoy*, 88 Va. 1029. "It is a well-settled rule that every charge under a stamp act must be imposed by clear and unambiguous words:" *Smith v. Waters*, 25 Ind. 397, 399. See *Savannah v. Hart-ridge*, 8 Ga. 23; *Williamsburg v. Lord*, 51 Me. 590; *Boyd v. Hood*, 57 Pa. St. 98. The burden of taxation will not be enlarged by implication; thus where a turnpike company's charter authorized the company to levy a tax upon adjoining property owners to aid in constructing the road, the company, in the absence of an express charter provision authorizing it to do so, had no right to borrow money in order to complete the road at an earlier date, and charge the interest paid on the loan to the taxpayer and include it in the tax levied: *Turnpike R. Co. v. Thomas* (Ky.), 3 S. W. Rep. 907. Railroad-aid laws should be construed strictly in favor of the rights of property, inasmuch as they impose a burden upon the public: *Demaree v. Johnson*, 150 Ind. 419. A statute imposing a penalty upon any person refusing to make the oath which the assessor of taxes is required to administer to persons listing their property with him is a penal statute and must be construed strictly; it does not apply where there has been no express offer by the assessor to administer the oath,

but merely a refusal to subscribe a printed form of affidavit, and no refusal to take the oath prescribed: *Marion County v. Kruedenier*, 72 Iowa 92. In *Alton v. Aetna Ins. Co.*, 82 Ill. 45, it was held that authority to tax insurance companies to procure fire extinguishing apparatus and build reservoirs would not warrant a tax for the benefit of the fire department. Under a constitutional power to tax for the payment of the state debt, taxes cannot be levied for interest on state bonds which remain unsold in the hands of state officers. *Cheney v. Jones*, 14 Fla. 587. A provision that in an action to enforce a special assessment "any municipal corporation . . . may recover in addition to the amount assessed and interest thereon at ten per cent. five per cent. to defray the expenses of collection," is to be construed strictly; and the additional interest cannot be allowed in an action not by the city: *Des Moines Brick Manuf. Co. v. Smith*, 108 Iowa 307. Under a statute making it the duty of the tax-collector of the county in which a defunct city is situated to collect such taxes as may be assessed by the county tax-assessor, the county tax-collector cannot collect back taxes levied by the city assessor of the defunct city: *Pensacola v. Sullivan*, 23 Fla. 1. A statute providing for assessing taxes on property for past years in which such taxes have not been assessed does not authorize penalties for past years to be included in such assessment: *State v. Winona & St. P. L. Co.*, 39 Minn. 380, 40 Minn. 512. It being "a well-settled rule that a citizen cannot be subjected to special burdens with

tion, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government, and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import. Revenue statutes are in no just sense remedial laws, or laws founded upon any permanent public policy, and therefore are not to be liberally construed. Hence, in the present case, if it be a matter of real doubt whether the intention of the act of 1841 was to levy a permanent duty on indigo, that doubt will absolve the importer from paying the duty beyond the period when it would otherwise be free."¹ Duties, it is said by Mr. Justice *Nelson*, "are never imposed upon the citizen upon vague or doubtful interpretations."² "The revenue laws," it is said in another case, "are not to be so construed as to extend their meaning beyond the clear import of the words used."³ In another case remarks are made by an able circuit judge which apply with great force to nearly all the federal revenue laws. "In construing a severe statute, declaring a heavy forfeiture (and, according to one construction claimed, for small offenses), it is just to say that those who are called upon to conduct their business affairs in view of all its provisions ought to be fairly apprised of its require-

out the clear warrant of law," a doubt whether a particular fund is subject to the transfer-tax act should be resolved in the taxpayer's favor. In *re Enston's Will*, 113 N. Y. 174; In *re Fayerweather*, 143 N. Y. 114; In *re Harbeck*, 161 N. Y. 211. A statute providing for a tax on "premiums" does not apply to companies doing business on the assessment plan: *Northwestern Masonic Aid Assoc. v. Waddill*, 138 Mo. 628. The right to resort, for the collection of taxes, to a summary remedy of unusual harshness and rigor, cannot be implied in any case: *Irwin's Succession*, 38 La. An. 75. The rule of strict construction will be applied as

against a county in favor of the state, if the effect of a different construction would unjustly burden the state to the relief of the county: *State v. Brewer*, 64 Ala. 287. See, further, *Bowling Green, etc. v. Warren County*, 10 Bush 711; *Mankato v. Fowler*, 32 Minn. 634.

¹ *United States v. Wigglesworth*, 2 Story 369, 373. To the same effect, *Rice v. United States*, 53 Fed. Rep. 910. See *Board of Supervisors v. Tallant*, 96 Va. 723.

² *Powers v. Barney*, 5 Blatch. 202, 203.

³ *United States v. Watts*, 1 Bond 580, 583, per *Leavitt, J.*

ments and its penalties, of whatever kind. They are bound to know the law, but law-makers owe to them the duty to make the law intelligible; and those whose business it is to construe or expound a law which is of doubtful or double meaning should not incline to the harshest possible meaning when it is obvious that those to whom it is to be applied may well have been led to trust in another, which is less severe, but equally satisfying its terms. This is not saying that laws of the kind in question are to be strictly construed in favor of the subject and against the state, but only that they should be construed with reasonable fairness to the citizen.”¹ There are some cases, however, from which, if the expressions made use of in the opinions are taken literally, a different rule might be deduced. Thus it is said in one case: “A revenue law is not to be strictly construed, but *rather the contrary*, so as to attain the ends for which it was enacted.”² In other cases it is said that “the penalties annexed to violations of general revenue laws do not make them penal, in the sense which requires them to be construed strictly.”³ And in the decision of a recent case in the United States supreme court a similar view seems to be taken. “Revenue statutes,” it is said, “are not to be regarded as penal, and therefore to be construed strictly. *They are remedial in their character* and to be construed *liberally*, to carry out the purposes of their enactment.”⁴

It seems highly probable that the word *remedial* has been employed by the learned judge delivering the opinion in this case in a sense differing from that in which it is commonly used in the law. A remedial law, as the term is generally employed, is something quite different from the revenue laws. An author of accepted authority expresses the ordinary understanding when he defines a remedial statute to be “one which

¹ *Woodruff, J.*, in *United States v. Distilled Spirits*, 10 Blatch. 428, 433.

² *Deady, J.*, in *United States v. Olney*, 1 Abb. (U. S.) 275, 282. See *Twenty-eight Cases*, 2 Ben. 63.

³ *United States v. Barrels of Spirits*, 2 Abb. (U. S.) 305, 314, per *Dillon, J.* And see *United States v. Cases of Cloth*, Crabbé 358.

⁴ *United States v. Hodson*, 10 Wall.

395, 406, citing *Cliquot's Champagne*, 3 Wall. 114, 115. Statutes for the assessment of property which had been omitted from the rolls for previous years have been held to be remedial statutes and not repugnant to constitutional provisions against retroactive legislation: *New Orleans v. Railroad Co.*, 35 La. An. 679; *Gager v. Prout*, 48 Ohio St. 89.

supplies such defects and abridges such superfluities of the common law as may have been discovered;¹ such as may arise either from the imperfection of all human laws, from change of time and circumstances, from mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatever; and this being done either by enlarging the common law where it was too narrow and circumscribed, or by restraining it where it was too lax and luxuriant, has occasioned another subordinate division of remedial acts into *enlarging* and *restraining* statutes. So it seems that a remedial statute may also have its application to, and effect upon, other existing statutes, and give the party injured a remedy; and for a more general definition, 'it is a statute giving a party a mode of remedy for a wrong where he had none or a different one before.'"²

Mr. Justice Blackstone speaks of statutes against frauds as remedial, but the context shows he is speaking of statutes giving parties a remedy against frauds; and he adds: "when the statute acts upon the offender and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly, but when the statute acts upon the offense by setting aside the fraudulent transaction, here it is to be construed liberally."³ Another author, in pointing out the distinction between penal and remedial laws, remarks that "the remedy for breach of a remedial statute is by an action for damages, sustained from such a breach, at the suit of the party grieved; that for breach of a penal statute, by an action of debt for the penalty; or, in more concise terms, the legal distinction between remedial and penal statutes is, that the former gives relief to the party grieved; the latter imposes penalties for offenses committed."⁴ These considerations would seem to justify the conclusion that the learned judge, in applying the word "remedial" to tax laws, has used it in some political or special, rather than in the strict legal, sense, and that it was not the intention of the court to

¹ Blackstone's Commentaries, vol. I, p. 86.

² Potter's Dwarries on Statutes, 73, citing Chitty's note to Blackstone's Commentaries, vol. I, p. 86. The definition in Bouvier's Law Dictionary is the same.

³ Blackstone's Commentaries, vol. I, p. 88.

⁴ 13 Pet. Abr. 297, note. And see *Cummings v. Frye*, Dudley 182; *Carey v. Giles*, 9 Ga. 253. Also the instance of remedial statutes in Potter's Dwarries on Stat. 281, 245.

overrule the opinion of Mr. Justice Story in *Wigglesworth's* case.¹

There may and doubtless should be a distinction taken in the construction of those provisions of revenue laws which point out the subjects to be taxed, and indicate the time, circumstances, and manner of assessment and collection, and those which impose penalties for obstructions and evasions. There is no reason for peculiar strictness in construing the former. Neither is there reason for liberality. The difference in some cases is exceedingly important. The one method squeezes everything out of the statute which the unyielding words do not perforce retain; the other reaches out by intendment, and brings within the statute whatever can fairly be held embraced in its beneficent purpose. The one narrows the statute as it is studied; the other expands it. Every lawyer knows how much easier it is to find a remedy in a statute than an offense. There must surely be a just and safe medium between a view of the revenue laws which treats them as harsh enactments to be circumvented and defeated if possible, and a view under which they acquire an expansive quality in the hands of the court, and may be made to reach out and bring within their grasp, and under the discipline of their severe provisions, subjects and cases which it is only conjectured may have been within their intent. Revenue laws are not to be construed from the standpoint of the taxpayer alone, nor of the government alone.² Construction is not to assume either that the tax-

¹ The opinion in *United States v. Hodson*, 10 Wall. 395, refers to *Cliquot's Champagne*, 4 Wall. 114, which in turn refers to *Taylor v. United States*, 3 How. 193. The opinion in this last case was given by Mr. Justice Story, and the language made use of, which consists largely in a quotation from the opinion given in the lower court, does not express his own views so clearly as was customary with that learned judge. What is manifest in his opinion is, that the point was not regarded as of importance in that case, the meaning of the statute being plain; and while the distinction pointed out by the

lower court between penal and remedial laws is approved and shown to be in accordance with the authorities, it is not clear that the general remarks of the judge were intended to go further. It would have been a remarkable circumstance if Mr. Justice Story had overruled his own opinion, delivered so recently that, at that time, his son (and reporter) had not issued the volume containing it.

² A construction will not be put upon a tax-law which would enable a person for whom no purpose of exemption is expressed to escape taxation altogether: *Philadelphia v. Ridge*

payer, who raises the legal question of his liability under the laws, is necessarily seeking to avoid a duty to the state which protects him, nor, on the other hand, that the government, in demanding its dues, is a tyrant, which, while too powerful to be resisted, may justifiably be obstructed and defeated by any subtle device or ingenious sophism whatsoever. There is no legal presumption either that the citizen will, if possible, evade his duties, or, on the other hand, that the government will exact unjustly or beyond its needs. All construction, therefore, which assumes either the one or the other, is likely to be mischievous, and to take one-sided views, not only of the laws, but of personal and official conduct. The government in its tax legislation is not assuming a hostile position towards the citizen, but, as we have elsewhere said, is apportioning, for and as the agent of all, a duty among them; and the citizen, it is to be presumed, will perform that duty when it is clearly made known to him, and when the time of performance has arrived. Unjust exactions, if such are made, must be attributed to human imperfection, not to intent; and frauds and evasions are to be supposed exceptional.¹ A recent decision of the supreme court of Connecticut lays down a rule, which, as applied to those provisions of the revenue laws which apportion the taxes and give ordinary remedies for their collection, seems not objectionable, though more liberal than is recognized by the authorities generally. The case was a revenue case, and the question was whether a statute for imposing a personal tax on "persons who are residents" of the taxing districts could

Av. R. Co., 102 Pa. St. 190. A statutory provision that statutes must be liberally construed to promote justice would be violated if revenue statutes were so construed as to exclude a large proportion of property in the state owned by individuals: *Salisbury v. Lane* (Idaho), 63 Pac. Rep. 383.

¹ A tax-law is not to be held void simply because in its operation it is unjust: *Porter v. Rockford, etc. R. Co.*, 76 Ill. 563. See *Kirby v. Shaw*, 19 Pa. St. 258; *Commonwealth v. Savings Bank*, 5 Allen 428; *People v.*

Whyler, 41 Cal. 351. The fact that one has no occasion to use the road on which he was assigned to duty is no defense to a prosecution for failure to render road duty: *State v. Gillikin*, 114 N. C. 832. A law incorporating a turnpike company is not invalidated by the fact that residents of the taxing district created are also residents of and subject to tax in another state, or by the fact that they receive no benefit from the road built: *Bruce v. Vanceburg & S. L. T. R. Co.* (Ky.), 35 S. W. Rep. 112.

be applied to the personalty belonging to the estate of a deceased person. In support of such a construction it is said:

“The greatest, and perhaps the only, objection that can be urged against this rule is, that we cannot say in strictness that the deceased or his estate is a resident of the district. This objection assumes that the statute is to be strictly construed. But we do not think that the doctrine of strict construction should apply to it. Statutes relating to taxes are not penal statutes, nor are they in derogation of natural rights. Although taxes are regarded by many as burdens, and many look upon them even as money arbitrarily and unjustly extorted from them by government, and hence justify themselves and quiet their consciences in resorting to questionable means for the purpose of avoiding taxation, yet, in point of fact, no money paid returns so good and valuable a consideration as money paid for taxes laid for legitimate purposes. They are just as essential and important as government itself; for without them, in some form, government could not exist. The small pittance we thus pay is the price we pay for the preservation of all our property and the protection of all our rights. But there is not only a necessity for taxation, but it is eminently just and equitable that it should be as nearly equal as possible. Hence it is the policy of the law to require all property, except such as is specially exempted, to bear its proportion of the public burdens. Not only so, but the law manifestly contemplates that property rated in the list shall be liable for all taxes—town and school district taxes alike. This is evident from the provision that district taxes shall be laid on the town list, with special provision for certain changes rendered necessary in order to tax all the real estate situated within the district, and none situated without, and also to assess the tax in each instance upon the right person. In construing statutes relating to taxes, therefore, we ought, where the language will permit, so to construe them as to give effect to the obvious intention and meaning of the legislature, rather than to defeat that intention by a too strict adherence to the letter.”¹

¹Cornwall v. Todd, 38 Conn. 443, Brainard, 35 Conn. 563, 568, by Butler, J.: “A law imposing a tax is not to be construed strictly because it takes money or property *in invitum*.”
447; Aggers v. People, 20 Colo. 348; Travelers Ins. Co. v. Kent, 151 Ind. 349. So it is said in Hubbard v.

If there should be any leaning in such cases it would seem that it should be in the direction of the presumption that everything is expressed in the tax-laws which was intended to be expressed. The laws are framed by the government for its own needs, and, if imperfections are found to exist, the legislature, in the language of Mr. Dwarrris, "is at hand to explain its own meaning, and to express more clearly what has been obscurely expressed." But there can be no propriety in construing such a law either with exceptional strictness amounting to hostility, or with exceptional favor beyond that accorded to other general laws. It is as unreasonable to sound a charge upon it as an enemy to individual and popular rights, as it is to seek for sophistical reasons for grasping and holding by its

(although its provisions are for that reason to be strictly executed), for it is taken as a share of necessary public burden; nor liberally, like laws intended to effect directly some great public object, but fairly for the government and justly for the citizen; so as to carry out the intention of the legislature, gathered from the language used, read in connection with the general purpose of the law, and the nature of the property on which the tax is imposed, and the legal relation of the taxpayer to it." In *Rein v. Lane*, Law R. 2 Q. B. 144, 150, *Blackburn*, J., says: "We must construe the words of the statute imposing the duty according to the intention which those words express when used in such a statute for such a purpose." And in *Lord Foley v. Commissioners*, Law R. 3 Exch. 263, 268, *Kelley*, C. B., justly remarks that "it is better for the subjects and the state that the ordinary rules of construction should be applied." In 3 *Parsons on Contracts* 287, the proper rule is stated clearly and concisely: "It is a well settled principle that every charge upon the subject must be imposed by clear and unambiguous words. . . . But it is equally certain that no interpretation will

be adopted which must defeat the purpose of the law, provided the language of the statute admit fairly and rationally of an interpretation which sustains that purpose." See *Fleming v. Sinclair* (Ky.), 58 S. W. Rep. 370. In the following cases it is held that tax-laws should be construed liberally: *Gallup v. Schmidt*, 154 Ind. 196; *Monticello Distilling Co. v. Mayor*, 90 Md. 416; *Auditor-General v. Hutchinson*, 113 Mich. 245; *Bacon v. State Tax Com'rs* (Mich.), 85 N. W. Rep. 307. The power of the county commissioners in respect to the annual levy of taxes and to the assessment of property for taxation should receive a reasonable and liberal construction rather than one that is strict and severe: *Baltimore, C. & A. R. Co. v. Commissioners* (Md.), 48 Atl. Rep. 853. Measures for reaching omitted property are in aid of the common right of the people, who are sovereign, and should not be strictly and narrowly construed, but, rather, they should be liberally interpreted in aid of the taxing power: *Co-operative Building & L. Assoc. v. State* (Ind.), 60 N. E. Rep. 146, citing *Graham v. Russell*, 152 Ind. 186; *Stone Co. v. Woodard*, 152 Ind. 474.

authority every subject of taxation which the drag-net of the official force has brought within its supposed compass. The construction, without bias or prejudice, should seek the real intent of the law; and if the leaning is to strictness, it is only because it is fairly and justly presumable that the legislature, which was unrestrained in its authority over the subject, has so shaped the law as, without ambiguity or doubt, to bring within it everything it was meant should be embraced.¹

In the state revenue laws the penal provisions are few and by no means severe. In the federal revenue laws, some of them are of a severity very seldom to be met with in penal statutes, and only to be justified by the supposed impossibility of collecting the revenue without them. In illustration of what is here said, reference need only be made to the case of forfeiture of property for the mere indulgence of a fraudulent intent never carried into effect; a forfeiture, too, which may be visited upon a purchaser who has bought in good faith, and without suspicion of the intended fraud.² If such provisions are to be construed with liberality, there is no reason why any other penal provisions whatsoever should not be.

The provisions of tax-laws, like those of other statutes, are to be given a reasonable construction.³ It is said that "the

¹ *Commonwealth v. New York, L. E. & W. R. Co.*, 145 Pa. St. 57. It is altogether reasonable to construe revenue laws as intended to reach all the subjects of taxation coming within their reasons: *Big Black Creek Imp. Co. v. Commonwealth*, 94 Pa. St. 450; *Cornwall v. Todd*, 38 Conn. 443. See *Higgins v. Rinker*, 47 Tex. 393; *Philadelphia v. Ridge Av. R. Co.*, 102 Pa. St. 190. "We do not think it is the proper function of the judicial department of the government to impose taxation, which is a species of confiscation, by a strained construction of doubtful legislation:" *Laughlin's Appeal* (Pa.), 10 Atl. Rep. 832; *Commonwealth v. Lehigh Valley R. Co.*, 129 Pa. St. 451; *Commonwealth v. New York, L. E. & W. R. Co.*, 145 Pa. St. 57. Where, under a constitution exempting from

taxation mines, except the net proceeds thereof, a statute was enacted which reiterated the permissive language of the constitution in respect to the taxation of such net proceeds, but contained no mandatory provisions on the subject, held, that it did not clearly appear that the legislature intended such proceeds should be taxed: *Stanley v. Mining Co.*, 6 Colo. 415. A city charter prohibiting the taxation of property within the city, for the repair of roads outside, had no application to free turnpikes, which were not contemplated by the law at the time the charter was granted: *Read v. Yeager*, 104 Ind. 195.

² *Henderson's Distilled Spirits*, 14 Wall. 44.

³ *Chandler v. Spear*, 22 Vt. 388, 398, and cases there cited. Under a stat-

interpretation of words in their popular sense rather than according to their scientific meaning is peculiarly required in the construction of tax-laws, in the enactment of which the legislature must needs adopt a classification of persons and property for purposes of taxation . . . according to popular notions or ideas of the propriety of such taxation,"¹ effect is to be given, if possible, to every clause of a tax-statute, and it is the duty of courts to reconcile apparently conflicting provisions.² It has been held that a tax-law is to be construed in accordance with the settled policy of the state as announced in the Declaration of Rights.³ And unless it is impossible to avoid it a general revenue law should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid."⁴

Local powers to tax.⁵ The fact that the state creates municipal governments does not by implication clothe them with the power to levy taxes. That power must be conferred in terms, or must result by necessary implication from the language made use of in the law.⁶ But it is not requisite that any

ute providing that the county treasurer shall make on a certain date the list of delinquent property taxes, "which he shall immediately certify to the clerk," the word "immediately" is to be given a rational construction, and does not necessarily import the exclusion of any interval of time: *State v. St. Paul Trust Co.*, 76 Minn. 423. A provision of a statute that no tax therein imposed shall exceed seventy-five per cent. of the tax imposed by the last ordinance upon the subject must be considered as meaning only that the general tax imposed upon any business should not exceed seventy-five per cent. of the tax previously imposed upon that business, and not as prohibiting the assessment of a tax upon business which had previously been carried on free from taxation: *Mobile v. Craft*, 94 Ala. 156. In construing statutes of doubtful meaning, the intention of the legislature

is to be taken, or presumed, according to what is consonant to reason and good discretion: *Sibley v. Smith*, 2 Mich. 486, 492.

¹ *Evening Journal Assoc. v. State Board*, 47 N. J. L. 36; *State v. Johnson*, 20 Mont. 367.

² *Board of County Com'rs v. Wilson*, 15 Colo. 90. See *Woods v. Madison Supervisors*, 136 N. Y. 403.

³ *Monticello Distilling Co. v. Baltimore*, 90 Md. 416.

⁴ *Field v. Clarke*, 143 U. S. 649; *Robison v. Miner*, 68 Mich. 549.

⁵ By "local taxation" is intended taxation by counties and by municipal corporations having authority conferred by law: *Southern R. Co. v. St. Clair County*, 124 Ala. 491. School districts are political organizations possessing the power of taxation: *Landis v. Ashworth*, 57 N. J. L. 509.

⁶ See the following cases which have laid down and will serve to

particular technical or legal terms shall be made use of in giving the power; it is enough that the purpose is apparent, and that on a fair construction of the language employed the legislature must be deemed to have intended that the power should

illustrate this rule: *Lott v. Ross*, 38 Ala. 156; *Montgomery v. State*, 38 Ala. 162; *English v. Oliver*, 28 Ark. 317; *Wallis v. Smith*, 29 Ark. 354; *Douglass v. Placerville*, 18 Cal. 643; *Hewes v. 'Reis*, 40 Cal. 255; *Savannah v. Hartridge*, 8 Ga. 23; *Vanover v. Justices*, 27 Ga. 354; *Sanders v. Butler*, 30 Ga. 679; *Augusta v. Walton*, 37 Ga. 620; *Albany Bottling Co. v. Watson*, 103 Ga. 503; *Chicago v. Chicago, etc. R. Co.*, 20 Ill. 286; *Drake v. Phillips*, 40 Ill. 388; *Clarke v. Chicago*, 185 Ill. 354; *Kyle v. Malin*, 8 Ind. 34; *Harmony v. Osborne*, 9 Ind. 458; *Indianapolis v. Mansur*, 15 Ind. 112; *Adams v. Shelbyville*, 154 Ind. 467; *Clark v. Davenport*, 14 Iowa 494; *Fairfield v. Ratcliffe*, 20 Iowa 396; *Leavenworth v. Norton*, 1 Kan. 432; *Shawnee County v. Carter*, 2 Kan. 115; *Snyder v. North Lawrence*, 8 Kan. 82; *Kniper v. Louisville*, 7 Bush 599; *Campbell County Court v. Taylor*, 8 Bush 206; *Broadway Baptist Church v. McAtee*, 8 Bush 508; *Bullock v. Curry*, 2 Met. (Ky.) 171; *Municipality v. Pance*, 6 La. An. 515; *Holland v. Baltimore*, 11 Md. 186; *Bouldin v. Baltimore*, 15 Md. 18; *Boston v. Schaffer*, 9 Pick. 415; *Leonard v. Canton*, 35 Miss. 189; *Adams v. Greenville*, 77 Miss. 181; *St. Louis v. Laughlin*, 49 Mo. 559; *St. Charles v. Nolle*, 51 Mo. 122; *Carron v. Den*, 26 N. J. L. 594; *Shackelton v. Guttenberg*, 39 N. J. L. 660; *Sharp v. Spier*, 4 Hill 76; *Doughty v. Hope*, 3 Denio 574; *Tallman v. White*, 2 N. Y. 66; *Manice v. White*, 8 N. Y. 120; *Litchfield v. Vernon*, 41 N. Y. 123; *Cruger v. Dougherty*, 43 N. Y. 107; *Asheville v. Means*, 7 Ired. 406; *Mays v. Cincinnati*, 1 Ohio St. 161; *Cincinnati v. Bryson*, 15 Ohio St. 625; *Reed v. Toledo*, 18 Ohio St. 161; *Jonas v. Cincinnati*, 18 Ohio St. 318; *Oregon Steam, etc. Co. v. Portland*, 2 Or. 81; *Corbett v. Portland*, 31 Or. 407; *Bennett v. Birmingham*, 31 Pa. St. 15; *Philadelphia v. Tryon*, 35 Pa. St. 401; *Nicol v. Nashville*, 9 Humph. 252; *Henry v. Chester*, 15 Vt. 460; *Richmond v. Daniel*, 14 Grat. 385; *Orange & A. R. Co. v. Alexandria*, 17 Grat. 176; *Dean v. Charlton*, 27 Wis. 522; *State v. Tomahawk Common Council*, 96 Wis. 73; *United States v. Burlington*, 2 Am. L. Reg. N. S. 394. Where it is a matter of grave doubt whether the legislature intended to empower towns organized under the general law to enforce a poll tax, the doubt must be resolved against the tax: *Morris v. Cummings*, 91 Tax. 618. The right of a school district to levy a tax, if it exists at all, must be clearly found in the statute: *Marion & M. R. Co. v. Alexander (Kan.)*, 64 Pac. Rep. 978. In the absence of statutory provisions, a town council has no power to assess taxes on property that has been omitted from taxation for any previous year: *Whiting v. West Point Council*, 89 Va. 741. Without legislative authority counties or municipal corporations cannot assess and collect back taxes on railroad property for years during which they had no authority to assess such property: *Staten v. Savannah, F. & W. R. Co.*, 111 Ga. 803. The power to impose taxes for past years as well as for current years must be clearly given before it can be exercised; and it cannot be inferred from a statutory provision that "the mayor and board of aldermen shall levy the municipal taxes at the regular meeting in September of each year, or, in case of failure so to do,

exist.¹ Where authority to contract debts is given, authority to tax for their satisfaction may be deemed given also, without express words to that effect, if such appears to be the intent of the legislature;² but an implication to that effect is not a necessary one,³ and a person who contracts with the municipality must take notice of its power to tax, and of any limitations thereof that may exist.⁴

at any other regular meeting thereafter." *Adams v. Greenville*, 77 Miss. 881. If city boundaries are extended after the time for the annual assessment has passed, it is competent to provide for an assessment for the current year of the property newly added: *Swift v. Newport*, 7 Bush 37. Compare *Waldron v. Lee*, 5 Pick. 323; *Jackman v. School Dist.*, 5 Gray 413.

¹"In authorizing 'freeholders charters' which the legislature cannot change or amend, the power of taxation, being essential to municipal existence, that power is necessarily implied:" *Security Savings Bank & T. Co. v. Hinton*, 97 Cal. 214. In *Fisher v. People*, 84 Ill. 491, it was held that in creating a school district for the building and supporting of a high school, a power to tax had been given though it was not mentioned in terms. A municipal corporation could not, under the general welfare clause of its charter, levy a school tax: *Nelson v. Homer*, 49 La. An. 258. A provision abolishing previous exemptions from taxation will not of its own force give municipalities power to tax; they must show express authority to tax, and not merely a negation of the privilege of exemption: *Savannah v. Railroad Co.*, 3 Woods 432.

²*United States v. New Orleans*, 98 U. S. 381; *Wolff v. New Orleans*, 103 U. S. 358; *Ralls County Court v. United States*, 105 U. S. 733; *Charlotte v. Shepard*, 122 N. C. 602; *Slocumb v. Fayetteville*, 125 N. C. 362;

Commonwealth v. Alleghany County Com'rs, 37 Pa. St. 277; *Feldman v. City Council*, 23 S. C. 62; *Wilson v. City Council*, 40 S. C. 426; *Austin v. Nalle*, 85 Tex. 520; *Oconto City Water Supply Co. v. Oconto*, 105 Wis. 76. See *United States v. Macon County*, 99 U. S. 582; *Meriwether v. Garrett*, 102 U. S. 472; *Lilly v. Taylor*, 88 N. C. 489. A city in providing for new bonds to refund an existing indebtedness has power, without express authority in the statute, to provide by ordinance for the levy of a tax to pay them: *Commissioners v. Zimmerman*, 101 Ky. 432. Authority conferred upon a city to erect water-works carries with it by implication the power to levy a tax for that purpose, provided the levy does not exceed the limitations prescribed by its charter: *Taylor v. McFadden*, 84 Iowa 262. Authority to rent buildings for school houses includes power to levy special tax to pay rent therefor: *Hackett v. Emporium Borough School Dist.*, 150 Pa. St. 220.

³*United States v. Cicero*, 41 Fed. Rep. 83. If the power of a municipality to levy taxes is expressly limited to a certain amount, an authority to contract debts or incur other obligations will not alone justify an inference that the power to levy an additional tax to pay such debts or obligations was also conferred: *Shackelton v. Guttenberg*, 39 N. J. L. 660; *Corbett v. Portland*, 31 Or. 407.

⁴*Supervisors v. United States*, 18

Construction of local power. When the power is found to have been conferred, if any question arises upon its extent or application, the rule is that the power must be strictly construed. It is a reasonable presumption that the state, which is the depositary and source of all authority on the subject, has granted in unmistakable terms all it has intended to grant at all. Municipal authorities, therefore, when they assume to tax, must be able to show warrant therefor in the words of the grant, which alone can justify their action. They are to assume that they can tax only as the state in its wisdom has thought proper to permit, and if the state has erred in the direction of strictness, the legislature alone can correct the evil.¹

Wall. 71; *Jeffries v. Lawrence*, 42 Iowa 498, citing *Iowa R. Land Co. v. Sac County*, 39 Iowa 124; *Miller v. Hixon* (Ohio), 59 N. E. Rep. 749; *United States v. Cicero*, 50 Fed. Rep. 147, citing *United States v. Macon County*, 99 U. S. 582.

¹ See *Wallis v. Smith*, 29 Ark. 354; *Vance v. Little Rock*, 30 Ark. 435; *Stanley v. Mining Co.*, 6 Colo. 415; *Moseley v. Tift*, 4 Fla. 402; *Ex parte Sims*, 40 Fla. 432; *Albany Bottling Co. v. Watson*, 103 Ga. 503; *Highway Com'rs v. Newell*, 80 Ill. 587; *Webster v. People*, 98 Ill. 343; *Drummer v. Cox*, 165 Ill. 648; *Clarke v. Chicago*, 185 Ill. 354; *People v. Chicago & A. R. Co.* (Ill.), 61 N. E. Rep. 1064; *Adams v. Shelbyville*, 154 Ind. 467; *Clark v. Davenport*, 14 Iowa 494; *Burlington v. Kellar*, 18 Iowa 59; *Marion & M. R. Co. v. Alexander* (Kan.), 64 Pac. Rep. 978; *Campbell County Court v. Taylor*, 8 Bush 206; *Board of Council v. Renfro* (Ky.), 58 S. W. Rep. 795; *Shreveport v. Prescott*, 51 La. An. 1895; *Ham v. Sawyer*, 38 Me. 37; *Bouldin v. Baltimore*, 15 Md. 18; *Loomis v. Rogers*, 53 Mich. 135; *Daily v. Swope*, 47 Miss. 367; *Adams v. Greenville*, 77 Miss. 881; *Wheeler v. Portsmouth*, 7 Neb. 274; *Meday v. Rutherford* (N. J.), 48 Atl. Rep. 529; *Tallman v. White*, 2 N. Y. 66; *Litchfield v. Vernon*, 41 N. Y.

123; *Oregon Steam Nav. Co. v. Portland*, 2 Or. 81; *Appeal of Conners*, 103 Pa. St. 356; *State v. Maysville*, 12 S. C. 76; *Kerr v. Woolley*, 3 Utah 456; *Schoolfield's Ex'r v. Lynchburg*, 78 Va. 366, 8 Am. & Eng. Corp. Cases, 488. The authority to lay a school tax of a certain per cent. does not warrant the laying of a poll tax: *Board, etc. of Indianapolis v. Wagner*, 84 Ind. 67. Authority to lay a road tax for future expenses will not justify a tax for prior indebtedness: *Highway Com'rs v. Newell*, 80 Ill. 587. See, for a like point, *Appeal of Conners*, 103 Pa. St. 356. Power to raise bridge money by tax or loan does not warrant a resort to both methods: *Loomis v. Rogers*, 53 Mich. 135. Under a statute for improving any road, etc., there is no authority for levying a tax to improve any specified part only of such road: *Elliott v. Berry*, 41 Ohio St. 110. A power that the legislature itself cannot exercise will not be presumed to have been granted to a municipal corporation: *Board of Council v. Renfro*, *supra*. Under a constitutional provision that the sum a municipal corporation may collect as a tax on a given occupation "shall not exceed one-half of the tax levied by the state for the same period on such profession or business," the legislature

Construction as to objects of taxation. This rule of construction limits municipalities, in the levy of taxes, strictly to the ordinary purposes for which such municipalities are accustomed to make levies. The customary grant does not go a step beyond this, because it cannot be supposed that in giving the customary authority the legislature had any but the usual and ordinary objects of local taxation in view. If, therefore, it becomes important that a municipality should raise revenue by taxation, to be devoted to unusual and extraordinary purposes, the authority cannot be found in the general grant and must be conferred specially. This is not only in accordance with the general rule that construes sovereign grants with strictness, but it is also obviously wise. The mischief of a strict construction is easily obviated by the legislature; but the mischief of a liberal construction may be irremediable before it can be reached.¹ It is in accordance with this rule that the authority conferred upon a county to levy a tax "for county purposes" was held, in Georgia, not to warrant a tax for the construction of public buildings; county purposes, as understood in that state, being the support of the poor, public education, and the like.² In Maine it was held that a general power in a

must impose a tax for the benefit of the state before a municipal corporation can tax it: *Hoefling v. San Antonio*, 85 Tex. 228. Where the state reserves to itself power to tax railroad property, and provides the method, a city whose charter gives it no power to tax such property cannot tax it: *Albany v. Savannah, etc. R. Co.*, 71 Ga. 158. A county cannot assess for taxation the capital employed by a merchant in his business, the legislature having prescribed no method therefor: *Board of Supervisors v. Tallant*, 96 Va. 723. And see, further, *ante*, p. 105, note 1. The granting of the power to levy and collect taxes carries with it the authority to adopt any reasonable method to make the power effectual: *Aurora v. McGannon*, 138 Mo. 38. Under power to regulate the collection of taxes a city may legally pro-

vide by ordinance for refunding money paid on illegal sales of property for municipal taxes made after the passage of the ordinance, but not on sales made before such passage: *Phelps v. Tacoma*, 15 Wash. 367. A tax to be imposed as long as needed to pay a particular debt means an imposition of the tax until the debt is satisfied: *Louisville v. Murphy*, 86 Ky. 53. A general authority given by a city charter to tax property for its purposes does not preclude the state's making exemptions within the city afterwards: *Richmond v. Richmond & D. R. Co.*, 21 Grat. 604.

¹ *Stetson v. Kempton*, 13 Mass. 272; *Alley v. Edgecomb*, 53 Me. 446.

² *Vanover v. Justices*, 27 Ga. 354. See *Alton v. Ætna Ins. Co.*, 82 Ill. 45. Taxes levied by a township board for township, road, and bridge purposes cannot be considered as levied for

town to tax for corporate purposes would not include the right to tax in order to make a toll-bridge free.¹ Whatever doubt might be raised as to this last decision, there can be none, we should suppose, of the correctness of those which have held

county purposes: *United States v. Macon County Court*, 75 Fed. Rep. 259. The general school tax levied by the county board, and collected from all the property in the county, but apportioned to the several school districts of the county, is not a tax levied for a county purpose within the meaning of a statute fixing a limitation upon the levy for territorial and county purposes: *Powder River Cattle Co. v. Commissioners*, 3 Wyo. 597. As to what is a county tax in Illinois, see *Wright v. Wabash & St. L. R. Co.*, 120 Ill. 541. What are "county purposes" in Minnesota: *McCormick v. Fitch*, 14 Minn. 252. A school tax is not a tax for a municipal purpose within a constitutional provision authorizing municipalities to

levy taxes for such a purpose: *Nelson v. Homer*, 48 La. An. 258. A tax for heating and repairing purposes was held to be a tax for school purposes, and not for building purposes, within the school law of 1889 limiting the taxes levied in any one year to an amount not to exceed two per cent. of the assessed valuation for school purposes, and three per cent. for building purposes: *Chicago & A. R. Co. v. People*, 163 Ill. 616. "School purposes," "public buildings in school districts," and "existing indebtedness" of school districts being each separately referred to in different statutes providing different qualifications for voting thereon, taxes for "school purposes" cannot be levied for building school-houses or paying indebted-

¹ *Bussy v. Gilmore*, 3 Me. 191. Where a city has authority to levy taxes only to a certain percentage on the assessment, the power to levy more is not to be implied from the fact that, by the charter, it is the city's duty to erect hospitals, poor-houses, etc., and more would be needed for these purposes: *Leavenworth v. Norton*, 1 Kan. 432. Statutory provisions authorizing the county court to levy the county levy, to provide for the maintenance of the county poor, to purchase land for poor-house purposes, and to levy a sufficient sum to pay for the improvements, do not authorize the court to levy an *ad valorem* tax for pauper purposes: *Louisville & N. R. Co. v. Pendleton County*, 96 Ky. 491. Nor does a statute authorizing a county to levy a tax to purchase land for the purpose of holding thereon agricultural fairs, authorize the county to levy a tax to be paid over to an agricultural so-

ciety: *Hixon v. Eagle River*, 91 Wis. 649. The authority given a city to levy a tax to pay interest on, and provide a sinking fund for the extinction of, an indebtedness, authorizes the levy of a tax to pay instalments of such indebtedness, which, by the terms of the contract creating it, fall due from year to year: *Mayfield Woolen Mills v. Mayfield* (Ky.), 61 S. W. Rep. 43. Where by statute power is conferred on a township committee to order a tax to pay interest on township bonds, the committee may order a tax to pay interest on notes given in lieu of certain of the bonds which had matured: *State v. Smith*, 47 N. J. L. 473. Under a charter power to regulate, clean, and keep in repair, streets, out of a fund raised by taxes each year, the city cannot by resolution expend money for graveling or macadamizing certain streets: *State v. Passaic*, 46 N. J. L. 124.

that a power to tax for necessary town charges would not warrant a tax to raise military forces or to pay military bounties. This is clearly no part of the corporate duty of a town, and could not be supposed within the intent of the legislature in

ness: *State v. Wabash, St. L. etc. R. Co.*, 83 Mo. 395. A tax levied for the erection of school buildings is one levied for "schools," and therefore leviable without the order of the county court: *St. Louis & S. F. R. Co. v. Gracy*, 126 Mo. 472. Under a statute providing that it shall be the duty of county commissioners to lay an annual tax on all taxable property within their respective counties for school purposes, such commissioners have power to levy a tax to satisfy a judgment against the trustees of a school district within the county where the amount belonging to such district is insufficient to satisfy the same: *State v. Board*, 12 Mont. 503. In North Carolina, under a constitutional provision prohibiting "any tax to be levied or collected by a county, city, or town, except for the necessary expenses thereof, unless by a vote of the qualified voters therein," a tax may be levied without such vote for building and repairing public roads: *Broadnax v. Groom*, 64 N. C. 244; *Herring v. Dixon*, 122 N. C. 420; *State v. Commissioners*, 122 N. C. 812; and for constructing free bridges: *Evans v. Commissioners*, 89 N. C. 154; and for erecting a court-house and jail: *Holcombe v. Commissioners*, 89 N. C. 346; *Vaughn v. Commissioners*, 117 N. C. 429; *Black v. Commissioners* (N. C.), 39 S. E. Rep. 818. But not for erecting city water-works: *Charlotte v. Shepard*, 120 N. C. 411; or for procuring water and light for the use of a town's inhabitants: *Thrift v. Town Com'rs*, 122 N. C. 31; or for erecting an electric-light plant for lighting a city's streets: *Mayo v. Washington*, 122 N. C. 5; or for school

purposes: *Rodman v. Washington*, 122 N. C. 39. This provision is not infringed by a statute which gives a town the same power of taxation as is possessed by the general assembly for state and county purposes: *State v. Irvin*, 126 N. C. 989. Another provision of the constitution of North Carolina is that "taxes levied by county commissioners shall never exceed twice the amount of the state levy except for special purposes and with the special approval of the general assembly." A bridge tax for specified bridges is for a special purpose within this provision: *Broadnax v. Groom*, 64 N. C. 244. So is a special poll-tax for constructing and repairing public roads and bridges in certain counties: *Herring v. Dixon*, 122 N. C. 420. But a statute authorizing a county to levy a special tax for the purpose of maintaining free public ferries and bridges, and of meeting other current expenses, is not an act authorizing the levy of a tax for a special purpose within the meaning of the above provision: *Williams v. Commissioners*, 119 N. C. 520. And a statute providing that whenever the school tax levied is insufficient to maintain the schools for four months, the county commissioners shall levy an annual special tax for school purposes, is unconstitutional, such tax not being a special tax for county purposes: *Board of Education v. Commissioners*, 111 N. C. 578, following *Barkesdale v. Commissioners*, 93 N. C. 472. Under these constitutional provisions, while the county commissioners can incur a debt for necessary expenses without a vote of the people, they cannot to

providing for necessary town charges.¹ The same may be said of the power to vote aid to a railroad enterprise, or to a corporation organized to construct any work of a similar nature, not wholly local in construction or in advantages; the power to give the aid must be conferred in terms, and must be strictly observed in the proceedings taken under it.²

pay it levy a tax in excess of the limit without the special approval of the legislature: *Vaughn v. Commissioners*, 117 N. C. 429. And if the levy beyond the prescribed limit of a tax for the erection of a court-house is authorized by a special statute, it is not required to be submitted to a vote of the people: *Black v. Commissioners* (N. C.), 39 S. E. Rep. 818.

¹ The leading case on this point is *Stetson v. Kempton*, 13 Mass. 272, 278, in which *Parker*, Ch. J., gives his idea of what constitutes town charges, as follows: "The phrase *necessary charges* is indeed general; but the very generality of the expression shows that it must have a reasonable limitation. For none will suppose that, under this form of expression, every tax would be legal which the town should choose to sanction. The proper construction of the terms must be that, in addition to the money to be raised for the poor, schools, etc., towns might raise such sums as should be necessary to meet the ordinary expenses of the year; such as the payment of such municipal officers as they should be obliged to employ, the support and defense of such actions as they might be parties to, and the expenses they would incur in performing such duties as the laws imposed, as the erection of powder houses, providing ammunition, making and repairing highways and town roads, and other things of a like nature; which are necessary charges, because the effect of a legal discharge of their corporate duty. The erection of public buildings for

the accommodation of the inhabitants, such as town houses to assemble in, and market houses for the sale of provisions, may also be a proper town charge, and may come within the fair meaning of the term *necessary*; for these may be essential to the comfort and convenience of the citizens. But it cannot be supposed that the building of a theater, a circus, or any other place of mere amusement, at the expense of the town, could be justified under the term *necessary town charges*. Nor could the inhabitants be lawfully taxed for the purpose of raising a statue or monument, these being matters of taste and not of necessity, unless, in populous and wealthy towns, they should be thought suitable ornaments to buildings or squares, the raising and maintenance of which are within the duty and care of the governors or officers of such towns." See *Alley v. Edgecomb*, 53 Me. 446. Compare *Lisbon v. Bath*, 21 N. H. 319; *Bangs v. Snow*, 1 Mass. 181; *Cruikshanks v. Charleston*, 1 McCord 360; *State v. Charleston*, 2 Speers 623; *Simmons v. Wilson*, 66 N. C. 336. And see *ante*, pp. 223, 224.

² See *Cooley*, Const. Lim. (5th ed.) 215, and cases cited *ante*, p. 214; *Campbell County Court v. Taylor*, 8 Bush 206; *State v. Macon County Court*, 68 Mo. 29; *Winston v. Railroad Co.*, 1 Baxt. 61; *Demaree v. Johnson*, 150 Ind. 419. For construction of a charter which was held to give power to construct water-works, see *Frederick v. Augusta*, 5 Ga. 561.

Construction as to taxables. A like rule applies as regards the subjects upon which the power to tax may be employed. It does not follow that, because the state has conferred the authority, it has intended it should be exercised to the same unlimited extent that it might be by the state itself; on the contrary, the discretion to select subjects for taxation rests with the state, and is supposed to have been exercised in granting municipal powers. On this ground it has been held that a power conferred by a city charter to tax "property within the city" would authorize the taxing of visible property only, and not credits,¹ that a power to tax personal property would not, without further specification, authorize the taxation of corporate stocks,² and that the power to impose license or

¹ *Johnson v. Lexington*, 14 B. Monr. 521; *Covington v. Powell*, 2 Met. (Ky.) 226; *Louisville v. Henning*, 1 Bush 381; *Vaughan v. Murfreesboro*, 96 N. C. 317. Under a general law providing that "all debts owing by inhabitants of this state to persons not residing within the United States for the purchase of any real estate shall be deemed personal property within the town or county where the debtor resides, and, as such, shall be liable to taxation in the same manner and to the same extent as the personal property of citizens of this state," and under a village charter providing that taxes may be assessed on property "within the corporation," and giving the village assessors within the village all the powers of town assessors, land contracts owned by non-residents of the United States on land within the state, and held by an agent residing in the village, are taxable in the village whether the land is in the village or not: *People v. Willis*, 133 N. Y. 383.

² *Richmond v. Daniel*, 14 Grat. 385. But in *Ogden v. St. Joseph*, 90 Mo. 522, it was held that a statute making property, real and personal, "in the city" or "within the city," liable to taxation, included intangible personalty such as shares of stock, owned

by a resident of the city, as the *situs* of such property is the residence of the owner when the contrary is not declared by statute. A statute authorizing the mayor and council of a city to levy and collect a tax upon banking, insurance, and other capital employed therein does not authorize the taxation of the capital stock of a corporation: *Macon v. Macon Construction Co.*, 94 Ga. 201. Compare *Augusta v. National Bank*, 47 Ga. 562, where a general power to tax property was held to justify taxing bank shares. A statute authorizing a tax on dividends over a certain per cent. on capital means capital actually paid in, and not merely authorized capital: *Street R. Co. v. Philadelphia*, 51 Pa. St. 465; *Philadelphia v. Ferry R. Co.*, 52 Pa. St. 177. See *City Bank v. Bogel*, 51 Tex. 355. A city not empowered to tax the capital of banks nevertheless had power to levy a tax for local purposes upon the shares of stock of a local bank, such a tax not being in effect one upon the bank's capital: *Union Bank v. Richmond*, 94 Va. 316. An interpretation of a statute for the assessment of a special tax which will interfere with the general tax law is not to be adopted unless there is the clearest language to justify it: *State v. Douglass*, 33 N. J. L. 363; *Smith v. Vicksburg*, 54 Miss.

privilege taxes is not contained in a grant of general local legislation.¹ Power given in general terms by a village charter to tax for village purposes all property within the village does not authorize a tax upon property which is exempted by the

615. In *Pearce v. Augusta*, 37 Ga. 597, it was held that a general power in a city to tax "all chattels, moneys, goods, wares, and merchandise, capital invested in shipping or tonnage, or capital otherwise invested," would support a tax on factors measured by the amount of sales. Where the constitution provided that the state poll tax should not exceed one dollar, and that no county or corporation should levy a poll tax exceeding the amount levied by the state, it was held that a municipal corporation could levy only one such tax, although an amendment to the charter might authorize, an additional poll tax for school purposes: *Ballentine v. Palaski*, 15 Lea 633.

¹ *Sanders v. Butler*, 30 Ga. 679; *Augusta v. Walter*, 37 Ga. 620. An ordinance imposing a license tax is void if not within the power granted: *Cache County v. Jensen* (Utah), 61 Pac. Rep. 303. Under a charter giving a town "power to levy and collect taxes upon all persons and subjects of taxation which it is in the power of the general assembly to tax for state and county purposes, under the constitution of the state," the town may impose a tax on persons for the privilege of carrying on the business of tobacco buyer, though the charter in enumerating the subjects of taxation does not mention tobacco buyers: *State v. Irvin*, 126 N. C. 989. A city charter which authorizes the council to assess and collect taxes "on such real estate in said city, and on such personal estate, shares in associations, and moneys within the city, or belonging to the inhabitants of said city, as they may designate, and such as now are,

or from time to time may be, taxable by the laws of this commonwealth," does not authorize a tax on a gas company's franchise, since there is no statute authorizing the imposition of a tax on the franchise itself for either state or municipal purposes: *Covington Gas Light Co. v. Covington*, 92 Ky. 312. A statute authorizing a city to levy "upon all goods, wares, and merchandise, and upon all articles of trade and commerce sold in said city, an annual tax not exceeding five mills," does not authorize the levy of a tax on the gross receipts of a natural-gas company doing business in the city: *Pittsburgh's Appeal*, 108 Pa. St. 162. The power of a county to tax property of a railroad company under a provision in the company's charter giving the power of taxation to municipal corporations is not affected by the fact that the charter was granted before the county was organized as a municipality: *Central R. & B. Co. v. Wright*, 164 U. S. 327. Where a telephone company is required to pay a specific state tax in lieu of all taxes for any purposes authorized by the laws of the state, a city cannot impose a license tax for revenue: *Wisconsin Tel. Co. v. Oshkosh*, 62 Wis. 32. See *Attorney-General v. Detroit Common Council*, 113 Mich. 388. A city was held to have authority by its charter to pass ordinances imposing a business tax on persons selling beer by wholesale, though the matter of license to sell liquors by retail was dealt with in another part of the charter: *Davis v. Macon*, 103 Ga. 774. A constitutional provision prohibiting the legislature from imposing taxes on counties for

general laws relating to all taxes.¹ Under a statute authorizing highway commissioners to "determine what per cent. of the tax shall be levied on the property of the town for road and bridge purposes," the highway commissioners of a town which includes a city may levy a road and bridge tax in behalf of the town upon all the property in the township.²

Where a city charter provided that the council might levy an annual *ad valorem* tax upon all property within the city limits "subject to taxation for state and county purposes," it was held that the state law in force when the assessment was made must govern, even though such law was passed subsequent to the charter.³

Liability of power to abuse. The liability of the taxing power to abuse is often assigned as a reason why, in particular cases, it should be held not to have been conferred. But this is illogical and unreasonable. "Every authority, however indispensable, may be abused, and if it might not, it would be powerless for good."⁴ The point is forcibly put by the supreme

county purposes, but permitting it by general law to vest in the authorities thereof the power to assess and collect taxes for such purposes, allows the imposition by county authorities of a general license tax applicable to one doing business in the county, though not a resident thereof, as well as to the residents thereof: *El Dorado County v. Meiss*, 100 Cal. 268.

¹ *Johnson House v. Schenectady*, 37 App. Div. (N. Y.) 147.

² *Peoria & P. U. R. Co. v. People*, 144 Ill. 458. As to the right of a city council to levy highway taxes where city and town are co-extensive in territory and have to a certain extent become united, see *People v. Chicago & A. R. Co.*, 172 Ill. 71.

³ *Anderson v. Mayfield*, 93 Ky. 230. Authority to assess "all taxable property" embraces all property taxable at the time authority is given, and all made taxable by subsequent legislation: *Buffalo v. Le Couteulx*, 15 N. Y. 451. A provision in a village charter

that the levy and collection of taxes shall be made in accordance with the requirements of the "existing general law," or of the "general law now in force," means the general law in force when the tax is levied or collected, and not the general law in force at the time the city was incorporated: *Newman v. North Yakima*, 7 Wash. 220. A provision in a village charter that the village taxes shall be assessed upon the freeholders and inhabitants "according to law," means, unless otherwise explained, according to the general laws of the state: *Ontario Bank v. Bunnell*, 10 Wend. 186, 194. Whenever a tax is authorized by law, and no special provision is made as to the source whence the revenue is to be derived, the law implies that the tax shall be levied upon all property subject to general taxation, and collected as other taxes: *Hale v. Kenosha*, 29 Wis. 599; *State v. Bremond*, 38 Tex. 116.

⁴ *Kirby v. Shaw*, 19 Pa. St. 258, 260. In Virginia, where a license tax was

court of Ohio. "It has been strongly urged that this power is peculiarly liable to abuse. It is liable to be abused; perhaps peculiarly so. But so is all government, and all governmental powers. Yet government is nevertheless a necessity among men. It is a very bad government indeed which is not better than the inevitable anarchy and outrage which follow the absence of all government. And the fact that a power is liable to be abused affords no conclusive argument against it."¹ It is only a reason for caution in construction, in order to be certain that the power is intended to be given, and for holding the donee of the power to a strict execution of the authority.²

Directory and mandatory provisions. Much use is made in the law of taxation of the words *directory* and *mandatory*, as words of classification of the various provisions of tax-laws, as regards the imperative nature of the obligation they impose on the revenue officers to obey them strictly. All the provisions of a statute not on their face merely permissive or discretionary are intended to be obeyed, or they would not be enacted at all; and therefore they come to the several officers who are to act under them, as commands. But the negligence of officers, their mistakes of fact or of law, and many other causes, will sometimes prevent a strict obedience, and when the provisions which have been disregarded constitute parts of an important and perhaps complicated system, it becomes of the highest importance to ascertain the effect the failure to obey them shall have on the other proceedings with which they are associated in the law. The form the question most commonly assumes is this: Some official act which the law provides for, and which constitutes one step to be followed by others in reaching a specified result, having failed to be taken, does the authority to proceed toward the intended result terminate when that particular step has been neglected, or may the proceeding go on to a conclusion, treating the neglect as immaterial? If the proceeding fails at that point, the requirement

contested as unjust and unequal, a similar idea was expressed: *Ould v. Richmond*, 23 Grat. 464.

¹ *Reeves v. Wood County Treasurer*, 8 Ohio St. 333. See *Breevort v. Detroit*, 24 Mich. 322, 325; *Bridgeport v.*

Nichols, 23 Conn. 189, 203; *Kneedler v. Lane*, 45 Pa. St. 238; *State v. Kinkead*, 14 Nev. 117.

² *People v. Chicago & A. R. Co. (Ill.)*, 61 N. E. Rep. 1064.

of the official act which has been neglected is said to be mandatory, but if it may still proceed, the requirement is directory only: that is to say, the law directs that particular act to be performed, but does not imperatively command it as a condition precedent to anything further.¹

In some cases the question assumes a different form. The municipalities, it has been seen, levy and collect taxes not only for their own purposes, but also under state apportionment for the state at large. The power to levy taxes for local uses is usually conferred upon them in merely permissive terms; terms implying a discretion to levy them or not at the will of the local majority or the local board. These terms may sometimes be open to the question whether they are intended to confer a discretionary authority merely, or, on the other hand, whether they are not meant to impose a duty and put the municipality under an imperative obligation.

A solution of this question will commonly depend upon the purpose of the tax for which authority is given. If the tax is for purely local purposes, the permission to levy it can seldom be regarded as anything more than an enabling authority, of which advantage may be taken or not, at discretion; but if it is for general purposes, the law must be regarded as imposing a duty. Thus, in whatever terms the authority is conferred upon a county to levy its proportion of the state tax, the levy is imperative; and permissive words in the statute may be construed as commands, and a reluctant local authority may be coerced into a performance of the duty.² The rule is the

¹ See, in general, *Young v. Joslin*, 13 R. I. 675; *Wiley v. Flournoy*, 30 Ark. 609; *Lane v. James*, 25 Vt. 481; *Rubey v. Huntsman*, 32 Mo. 501; *Milner v. Clarke*, 61 Ala. 258; *State Auditor v. Jackson County*, 65 Ala. 142; *Silsbee v. Stockle*, 44 Mich. 561; *Kelsey v. Abbott*, 13 Cal. 609; *Hoffman v. Bell*, 61 Pa. St. 444; *State v. Washoe County*, 14 Nev. 140; *Life Assoc. v. Assessors*, 49 Mo. 512; *Morrill v. Taylor*, 6 Neb. 236; *Adams v. Seymour*, 30 Conn. 402; *Houghton County v. Auditor-General*, 41 Mich. 28; *Davis v. Farnes*, 26 Tex. 296.

² In Florida it has been decided

that a statutory provision that commissioners may levy a tax for school purposes is mandatory: *Jones v. Board of Public Instruction*, 17 Fla. 411. A provision that the county court, when invoked in a special assessment case, may inquire into the apportionment between the municipality and the owners is mandatory: *Mercy Hospital v. Chicago*, 187 Ill. 400. The word "may" in the Louisiana statute providing that police juries of several parishes may levy, for the support of common schools, not less than a certain percentage of the assessed valuation of the property

same where what is authorized is for the purpose of meeting some legal obligation of the municipality; for the state has an interest in such obligations being performed; and "where a statute directs the doing of a thing for the sake of justice or the public good, the word *may* is the same as the word *shall*," and imports a duty equally imperative.¹ In most cases, however, the question whether any particular provision of a tax-law is mandatory or not will arise between the government and its officers, or some one claiming under their proceed-

thereof, is not mandatory but permissive, and such levy cannot be enforced by *mandamus*: *Parish Board School Directors v. Police Jury*, 40 La. An. 755. The words "may at its discretion appoint" in a charter provision were held to be merely permissive, and that a city council might make an assessment itself without the intervention of special assessors: *King Real Estate Assoc. v. Portland*, 23 Or. 199. Provision that "there may be included" a certain sum for opening and improving a certain avenue, held permissive merely: *People v. Syracuse*, 59 Hun 258. A statute authorizing the extension of the time of payment of assessments for local improvements is permissive, not mandatory; "may" is not "must": *State v. Minneapolis City Council*, 65 Minn. 298. In a provision that personal property "shall" be assessed to the owner in the township where he lives, and that personal property under the control of an agent "may" be assessed to such agent in the town where he lies, the word "may" is not to be read as "shall," and securities in an agent's custody may be assessed in part to the owner and in part to the agent: *Curtis v. Richland T'p*, 56 Mich. 478. "May" held to be used in its ordinary meaning as permissive, not as mandatory: *People's Nat. Bank v. Ayer*, 24 Ind. App. 212.

¹*Rex v. Barlow*, 2 Salk. 609. See *Rex v. Inhabitants of Derby*, Skin-

ner 370; *Minor v. Mechanics' Bank*, 1 Pet. 46; *Mason v. Pearson*, 9 How. 248; *Supervisors v. United States*, 4 Wall. 435; *Galena v. Amy*, 5 Wall. 705; *Chicago & A. R. Co. v. People*, 163 Ill. 616; *De Pauw Plate Glass Co. v. Alexandria*, 152 Ind. 443; *Coy v. Lyons City*, 17 Iowa 1; *Justices v. Railroad Co.*, 11 B. Monr. 143; *Doores v. Varnon*, 94 Ky. 507; *Baltimore v. Marriott*, 9 Md. 160, 174; *State v. Harris*, 17 Ohio St. 608; *Virginia v. Justices*, 2 Va. Cases, 9. Where a statute clothes a public body or officer with power to refund taxes illegally collected, it will be deemed mandatory although the words are merely permissive. So held of a statute which authorized supervisors to refund taxes levied and collected on government securities: *People v. Supervisors*, 51 N. Y. 401. See, to the same effect: *Hayes v. Los Angeles*, 99 Cal. 74; *Indianapolis v. McAvoy*, 86 Ind. 587; *Jones v. Board of Public Instruction*, 17 Fla. 411; *Smith v. King*, 14 Or. 10; *De Pauw Plate Glass Co. v. Alexandria*, 152 Ind. 443. A statute giving power to levy a real-estate tax if a capitation tax would probably be insufficient, held mandatory: *Bates v. Speed*, 10 Bush 644. So with a provision that repayment of invalid taxes paid "may be demanded" within thirty days after payment: *Railroad Co. v. Reidsville*, 109 N. C. 494; *Hatwood v. Fayetteville*, 121 N. C. 207.

ings, on the one side, and the person taxed on the other; and the form it will take will be, whether the person taxed is entitled to defeat the proceeding which is being taken adversely to him, by reason of the failure on the part of the officers to observe some direction of the statute under which they derive their authority. If he may, it is because the direction was mandatory, and obedience to it a condition precedent to any further adverse proceedings.

The phraseology of the statute may sometimes settle this question very conclusively. If by the use of negative words it requires a particular proceeding to be taken in a particular time or manner, and makes it void if not so done,¹ or gives it effect, provided it is so done,² or declares that, unless it is taken, subsequent proceedings shall not be had,³ or prohibits its being done except at the time the statute prescribes,⁴ or if any terms plainly imperative are employed, the intent is clear, and no discretion can be permitted in construction. It is not often, however, that these or similar words are met with in the statutes which define official duties under the revenue laws, and the construction of particular provisions must be left for determination in such light as the obvious purpose they were intended to accomplish may afford. And that purpose, it would seem, ought generally to be conclusive. No one should be at liberty to plant himself upon the non-feasances or misfeasances of officers, under the revenue laws, which in no way concern himself, and make them the excuse for a failure on his part to perform his own duty.⁵ On the other hand, he ought always to be at liberty to insist that directions which the law has given to its officers for his benefit shall be observed. Many eminent judges have endeavored to lay down

¹ *The King v. Hepswell*, 8 B. & C. 466.

² *The King v. Inhabitants of Gregory*, 2 Ad. & El. 99.

³ *Stayton v. Hulings*, 7 Ind. 144.

⁴ *In re Douglass*, 46 N. Y. 42. Where the statute provided that no tax should be levied by a school board after the third Monday in May, it was held that the collection of a tax levied after that date should be en-

joined: *Standard Coal Co. v. Angus*, 73 Iowa 304. Under a statute providing that no county tax shall be levied except at a regular term of the county court, a tax levied at a called term is illegal: *Free v. Scarborough*, 70 Tex. 272.

⁵ *Stockle v. Silsbee*, 41 Mich. 615; *State v. Phillips*, 137 Mo. 259. See *Adams v. Seymour*, 30 Conn. 402.

a general rule on this subject, by which the difficulties in tax cases may in general be solved. In one of the most recent cases in which this has been attempted, the general doctrine is stated as follows: "There are undoubtedly many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them, which do not limit their power, or render its exercise in disregard of the requisitions ineffectual. Such generally are regulations designed to secure order, system, and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected. Provisions of this character are not usually regarded as mandatory, unless accompanied by negative words, importing that the act required shall not be done in any other manner or time than that designated.¹ But when the requisitions prescribed are intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory. They must be followed, or the acts done will be invalid. The power of the officer in all such cases is limited by the measure and conditions prescribed for its exercise."²

The same rule in nearly the same terms has been laid down in other cases,³ and it seems a sound and just rule, and may

¹ *State v. Phillips*, 137 Mo. 259. Many statutory regulations are designed for the information of tax officials, and a compliance is not a condition precedent to the validity of the tax: *State v. West Duluth Land Co.*, 75 Minn. 456.

² *Field, J.*, in *French v. Edwards*, 13 Wall. 506, 511. See *State Auditor v. Jackson County*, 65 Ala. 142.

³ *Lyon v. Alley*, 130 U. S. 177; *Walker v. Chapman*, 22 Ala. 116; *Wheeler v. Chicago*, 24 Ill. 105, 108; *Shawnee County v. Carter*, 2 Kan. 115; *Wheatly v. Covington*, 11 Bush 18; *McDonough v. Gravier*, 9 La. An. 546; *O'Neal v. Virginia & M. Bridge Co.*, 18 Md. 1; *Torrey v. Milbury*, 21 Pick. 64; *Westhampton v. Searle*, 127 Mass. 502; *Clark v. Crane*, 5 Mich. 151,

154; *Bird v. Perkins*, 33 Mich. 21; *Flint, etc. R. Co. v. Auditor-General*, 41 Mich. 635; *State v. Jersey City*, 35 N. J. L. 381; *Kelly v. Craig*, 5 Ired. 129; *Sweigle v. Gates*, 9 N. D. 538; *Eaton v. Bennett* (N. D.), 87 N. W. Rep. 188; *Magee v. Commonwealth*, 46 Pa. St. 358; *Spear v. Ditty*, 8 Vt. 419; *Powder River Cattle Co. v. Board of Com'rs*, 45 Fed. Rep. 323. Statutes prescribing the mode of assessing and collecting taxes must be pursued strictly: *Union Central L. Ins. Co. v. Chapin* (Iowa), 85 N. W. Rep. 791. All acts required by the statute in order to make the tax chargeable are conditions precedent and must be complied with strictly or the tax cannot be collected: *Howes v. Reis*, 40 Cal. 255.

reasonably be believed to be in accord with the legislative will in the cases to which it is applicable. All legislation must be supposed to take into account the possible, if not probable, mistakes and irregularities of officers in executing the provisions of the law, and it is hardly reasonable to infer an intent, on the part of a legislative body, that a failure of administrative officers to comply with any provision made for the benefit of the state exclusively, or merely as a guide in orderly proceedings, should deprive the state of all benefit to be derived from a compliance with other provisions that embody the main purpose and object of the law.¹ Nor, on the other hand, is it to be supposed the legislature intended its own securities for the protection of individual rights and property should be disregarded with impunity.²

Instances of mandatory provisions. What, then, are the provisions of tax-laws which are made for the benefit and protection of the individual taxpayer? In many cases this question, as applied to particular provisions, is easily solved; in others there is more difficulty.³ That the taxpayer shall be entitled to such protection as the official responsibility of offi-

¹ *State v. Phillips*, 137 Mo. 259. The form of orders made for the guidance of the county auditor in entering the tax levies is not important if the substance is right and the auditor is not misled by it: *Bittinger v. Bell*, 65 Ind. 445.

² *Wiley v. Flournoy*, 30 Ark. 609; *Corbett v. Bradley*, 7 Nev. 106, 108; *Dryfuss v. Bridges*, 45 Miss. 247; *Briggs v. Georgia*, 15 Vt. 61, 72; *State v. Lean*, 9 Wis. 279, 292. In *Sandwich v. Fish*, 2 Gray 298, 301, *Shaw*, Ch. J., in answering an objection made on behalf of a defaulting collector, that certain provisions regarding the authority to collect had not been complied with, says: "The provisions of the statutes as to the form of warrants and tax-lists, and the place where the lists shall be deposited, are intended for the benefit of the taxpayers. As to all other persons they are directory

merely, and not conditions precedent. Defects in the warrant or tax-list might be a good excuse for not executing the warrant. But to say that a collector who has collected the money without objection by the taxpayers is not liable to account therefor would be as contrary to the rules of law as to justice. He can only avail himself of such defects as have prevented his performance of his duty."

³ The distinction between directory and mandatory provisions in tax-laws is explained in *O'Neal v. Virginia & M. Bridge Co.*, 18 Md. 1, 23, by *Tuck, J.*, referring to *Youngs v. State*, 7 G. & J. 253, and other Maryland cases. In a recent Michigan case it is said that unless a statute clearly appears to be mandatory it will be held directory: *Hooker v. Bond*, 118 Mich. 255.

cers can give him;¹ that the tax shall be voted or levied by the competent authority, and under any conditions which the law has prescribed;² that there shall be an assessment³ and an ap-

¹ In Vermont the decisions are that if the collector appointed to collect any tax assessed on lands for roads and bridges shall fail to give the required bond, any sale made by him is void: *Oatman v. Barney*, 46 Vt. 594, and cases cited. This is hardly consonant with the current of authority. See *ante*, pp. 430, 431.

² The statute requiring an adoption by popular vote of the amount of tax to be levied to pay bonds is mandatory: *State v. Babcock*, 21 Neb. 599. So is a law requiring publication, before levy of tax, of an estimate of necessary parish expenditures: *Wilson v. Anderson*, 28 La. An. 261; *Constant v. Parish of East Carroll*, 105 La. 286. A statute declaring that all resolutions, etc., involving taxation shall be published "in all the newspapers employed by the corporation," and not be passed until such notice has been published at least two days, is plainly intended to be imperative: *Petition of Douglass*, 46 N. Y. 42; *Petition of Smith*, 52 N. Y. 526. Where the statute prescribes a certain time for the levying court to convene and levy taxes, a levy by it at any other time is invalid, though it may have convened and made the levy at such time under a *mandamus* from the federal court: *Martin v. McDiarmid*, 55 Ark. 213. A provision of a city charter that the common council shall, on or before a specified date, levy the taxes on all property in the city sufficient to raise revenue to carry on the different departments of the municipal government, is peremptory, and a levy made after that date would be void: *Board of Education v. Common Council*, 128 Cal. 369, citing *People v. McCreery*, 34

Cal. 442. In Iowa it is said that if through negligence or mistake a tax is not levied at the proper time it may be levied at the time fixed for the succeeding tax-levy: *Perrin v. Benson*, 49 Iowa 325. As to a tax prematurely levied, see *Easton v. Savery*, 44 Iowa 654. A tax voted by supervisors at a time when no meeting is authorized for the purpose is illegal: *Board v. Supervisors*, 51 Miss. 542; *Gamble v. Witty*, 55 Miss. 26. An ordinance requiring that street improvements shall be ordered by resolution is mandatory, for by such resolution the city acquires jurisdiction to act: *Starr v. Burlington*, 45 Iowa 87. Where the statute provides for the assessment of a street railway corporation for the pavement of the space occupied by its roadbed, the provision is mandatory: *Shreveport v. Prescott*, 51 La. An. 1895.

³ Statutory provisions as to classification of property to be assessed, held mandatory: *McCutchen v. Lyon County Supervisors*, 95 Iowa 20; *State v. Thomas*, 16 Utah 86. Where the statute provided that a tax voted at an annual town meeting in March should be assessed on the tax-list of the May following, it was held mandatory, and the town incompetent by vote to authorize the selectmen to assess it on the list of the previous year: *Alger v. Curry*, 38 Vt. 382. Requirement that taxes be entered and extended upon the original assessment rolls in the hands of the supervisors, and that the rolls and tax-lists sent to the treasurer shall be copies of the original rolls, is mandatory: *Seymour v. Peters*, 67 Mich. 415. Statutory provision that supervisor require every person to

portionment;¹ that there shall be official warrant for any compulsory proceedings,²—all these are manifestly conditions precedent to any lawful demand whatever upon the citizen. They are of the highest importance, because it is only by means of the requirement of official action in an orderly manner and at periodical times that he can be protected against arbitrary and capricious action.³ Moreover, they go to make up the power which the law gives to its agents over the property and persons of the people, and without the power to act all attempted

make statement of taxable property is mandatory: *Turner v. Muskegon Circuit Judge*, 95 Mich. 1. So is the provision of the Vermont statute requiring listers to lodge abstracts in town clerk's office: *Smith v. Hard*, 59 Vt. 13. And list so lodged is invalid if not signed and certified with time of lodgment minuted: *Bundy v. Walcott*, 59 Vt. 665. A provision that unoccupied lands not claimed to be owned by residents be entered on a separate part of the roll, held mandatory: *Seymour v. Peters*, 67 Mich. 415. So with requirement that lands be assessed to owner or occupant, otherwise to "unknown owner:" *Bird v. Benlisa*, 142 U. S. 664; see *Sweigle v. Gates*, 9 N. D. 538. A provision that real estate shall be assessed to the owner and in separate parcels is for the benefit of taxpayers and mandatory: *Young v. Joslin*, 13 R. I. 675. Requirement that lots or parcels be separately assessed, held mandatory: *Frazier v. Prince*, 8 Okl. 253; *Neu v. Voegel*, 96 Wis. 489. So with a requirement that taxation shall be by value: *Life Assoc. v. Board of Assessors*, 49 Mo. 512. So with a requirement that the assessor determine and enter the value of each piece of realty listed for taxation; *Lockwood v. Roys*, 11 Wash. 697. Where a lot omitted from the assessment of the preceding year is to be placed upon the roll with the valuation of the last year when it was assessed, if it never was

on the roll it cannot be put on under the provision: *People v. Goff*, 52 N. Y. 434. Failure to file assessment roll by date fixed by code held to invalidate it: *Carlisle v. Goode*, 71 Miss. 453. Where the statute requires the tax-list to be certified by an oath "made and subscribed," this means an oath duly certified in writing, and the absence of it is fatal to the proceedings: *Davis v. Farnes*, 26 Tex. 296. That statutory requirements as to the authentication of the assessment are in general mandatory, see *post*, ch. XII. Requirement of notice of meeting of board of reviewers to assess damages and benefits is mandatory: *Hershberger v. Pittsburgh*, 115 Pa. St. 78.

¹ See *ante*, ch. VII.

² See *post*, ch. XII.

³ "The assessor acts under a special and limited authority, conferred by the law and not by the owner of the estate. He is the mere instrument to pass the title. The proceeding must be construed strictly, and the power must be strictly pursued in every particular. The law requires that every prerequisite to the exercise of the power to sell the estate must precede its exercise. The agent must pursue the power or his act will not be sustained by it:" *Wheeler*, Ch. J., in *Davis v. Farnes*, 26 Tex. 296, 297, citing earlier Texas cases. "Many of the provisions of our statute regulating the imposition of taxes must be considered directory merely.

action is a trespass upon individual rights.¹ So all provisions designed to give him the opportunity of a review of the assessment, whether by the assessors themselves, or on appeal from their conclusions, are exclusively in his interest.² Every notice which the statute provides for that end, whether by publication or otherwise, must be given with scrupulous observance of all its requisites.³ The notice cannot be shortened a single day without rendering it ineffectual; the presumption being that the law has made it as short as was deemed consistent with due protection.⁴ A published notice cannot be received

Some are doubtless conditions; such as those which are intended to secure an equality of taxation or burdens among the citizens, that is, that the citizen may know for what he is taxed, know his valuation, and have notice of the time and place of appeal:” *Coulter, J.*, in *Insurance Co. v. Yard*, 17 Pa. St. 331, 338.

¹ See *ante*, p. 426.

² See *Negley v. Henderson Bridge Co.* (Ky.), 45 S. W. Rep. 171. Provisions as to time and place of meeting of board of review held mandatory: *Wiley v. Flournoy*, 30 Ark. 609; *Caledonia T’p v. Rose*, 94 Mich. 216; *Auditor-General v. Chandler*, 108 Mich. 569. An order of a county board of review made after the time fixed by law for its session has expired is void: *Yocum v. First Nat. Bank*, 144 Md. 272. Omission of the proper certificate of equalization held to render a sale void: *Westbrook v. Miller*, 64 Mich. 129. Where, in taxing a railroad, the value is apportioned among the counties through which it runs, a provision that the auditor shall not thus apportion it until the equalization has been made is mandatory: *State Auditor v. Jackson County*, 65 Ala. 142; *Perry County v. Selma, etc. R. Co.*, 65 Ala. 391. So is one that the board of equalization shall keep a record of its proceedings which shall be signed by the members present: *Ibid.*

³ *Payson v. People*, 175 Ill. 267. In

order to give validity to an assessment, the statutory requirement as to notice is mandatory: *McTwiggan v. Hunter*, 18 R. I. 776. The statutory provisions requiring notice to the taxpayers apply whether his list is or is not made up by doubling because of his failure to return an inventory: *Thomas v. Leland*, 70 Vt. 223. To obtain jurisdiction by publication, it must affirmatively appear that the statute has been pursued strictly and its provisions complied with: *McChesney v. People*, 145 Ill. 614, 148 Ill. 221; *Payson v. People*, *supra*. A notice given in the mode prescribed by statute, but a day or two later, is of no effect: *Thomas v. Leland*, 70 Vt. 223. In California it has been held that a statute requiring the notice inviting the proposals for a public work to be conspicuously posted for five days was not complied with unless the notice was kept posted for that time: *Himmelman v. Cahn*, 49 Cal. 285; *Brooks v. Satterlee*, 49 Cal. 289. In *Sprague v. Bailey*, 19 Pick. 436, a provision that notice of abatement to those who should pay their taxes promptly should be posted in public places was regarded as directory merely. The point was not reasoned.

⁴ *State v. Newark*, 36 N. J. L. 288; *Pope v. Headon*, 5 Ala. 433; *Early v. Doe*, 16 How. 610; *Haskell v. Bartlett*, 34 Cal. 281.

as the substitute for a notice to be personally delivered to the party concerned,¹ and where the notice is to be given personally and also by publication, a failure in either is fatal.²

The same rules apply to any notice required of subsequent proceedings; if directed to be given within a certain time, or in any prescribed mode, it must be so given.³ Whatever tends to make the right to redeem more valuable to the taxpayer should be observed; and here time may be of the very highest importance; and at no stage of the proceedings should the requisites of notice be more strictly observed.⁴

“When the statute under which the sale is made directs a thing to be done, or prescribes the form, time, and manner of doing anything, such thing must be done, and in the form, time, and manner prescribed, or the title is invalid; and in this respect the statute must strictly, if not literally, be complied with. But in determining what is required to be done, the statute must receive a reasonable construction; and when no particular form or manner of doing a thing is pointed out, any mode which effects the object with reasonable certainty is suffi-

¹ *Moulton v. Blaisdell*, 24 Me. 283; *Lovejoy v. Lunt*, 48 Me. 377. And see *Roche v. Dubuque*, 42 Iowa 250; *Lagroue v. Rains*, 48 Mo. 536.

² *Appeal of Powers*, 29 Mich. 504.

³ The statute requiring tax-collectors to send to known resident owners of property a bill of their taxes is mandatory: *Davis v. Sawyer*, 66 N. H. 34. Under a statute providing that no sale of real estate for taxes should affect the rights of any person not taxable therefor unless a written demand was first made upon said person by the collector for the payment of said taxes, a tax was assessed to the owner of the equity of redemption, and lands were sold therefor, no demand being made upon the mortgagee before the sale. Held, that a repeal of the statute did not leave him liable for the tax: *Tinslar v. Davis*, 12 Allen 79. Where the statute required the sheriff, at the next term of the county court preceding a tax sale, to return a list of the lands on

which taxes were unpaid, with the names of the owners, if known, and other particulars, which was to be read aloud, recorded in the minutes, and posted in the room, this was held to be mandatory: *Kelly v. Craig*, 5 Ired. 129. Compare *Weir v. Kitchens*, 52 Miss. 74. All provisions regarding notice of sale and the place of sale are mandatory: *Martin v. Barbour*, 140 U. S. 634; *Martin v. Allard*, 55 Ark. 118; *Logan v. Eastern Ark. L. Co.*, 68 Ark. 248; *State v. Rollins*, 29 Mo. 267; *Rubey v. Huntsman*, 32 Mo. 501; *McNair v. Jenson*, 33 Mo. 312; *Mowry v. Blandin*, 64 N. H. 3; *Amoskeag Sav. Bank v. Alger*, 66 N. H. 414; *Derry Nat. Bank v. Griffin*, 68 N. H. 183; *Ramsay v. Hammel*, 68 Wis. 12. And see, further, *post*, ch. XV.

⁴ The statutory provisions for notice when the right to redeem expires are mandatory: *State v. Nord*, 73 Minn. 1. And see *post*, ch. XV.

cient; and in judging of these matters the court is to be governed by such rational rules of construction as direct it in other cases."¹

Besides the illustrations of mandatory requirements which have been given above, many others are noticed in the margin² and in other chapters.

Instances of directory provisions.³ On the other hand, the requirement of an official bond or oath from an officer is for

¹ *Hall, J.*, in *Chandler v. Spear*, 22 Vt. 388, 396, citing other Vermont cases.

² See, in general, in addition to the cases already cited regarding mandatory provisions: *Meriwether v. Muhlenburg*, 120 U. S. 854; *Commercial Bank v. Sandford*, 99 Fed. Rep. 154; *Jacobs v. Buckalew* (Ariz.), 42 Pac. Rep. 619; *Hare v. Carnall*, 39 Ark. 196; *People v. Clark*, 47 Cal. 456; *Richardson v. Heydenfeldt*, 46 Cal. 68; *Mix v. People*, 72 Ill. 241; *Gage v. Nichols*, 135 Ill. 128; *St. Louis, R. I. & C. R. Co. v. People*, 177 Ill. 78; *First Presb. Church v. Fort Wayne*, 36 Ind. 388; *Painter v. Hall*, 75 Ind. 209; *Kniper v. Louisville*, 7 Bush 599; *Doores v. Varnon*, 94 Ky. 507; *Sanborn v. Mason City* (Iowa), 86 N. W. Rep. 286; *Shreveport v. Prescott*, 51 La. An. 1895; *Sibley v. Smith*, 2 Mich. 486; *Rayner v. Lee*, 20 Mich. 384; *Silsbee v. Stockle*, 44 Mich. 561; *Gilchrist v. Dean*, 55 Mich. 244; *Westbrook v. Miller*, 64 Mich. 129; *Newkirk v. Fisher*, 72 Mich. 113; *Auditor-General v. Roberts*, 83 Mich. 471; *Crittenden v. Mt. Clemens*, 86 Mich. 220; *Hill v. Warrell*, 87 Mich. 135; *Tillotson v. Webber*, 96 Mich. 144; *Chambe v. Wayne Probate Judge*, 100 Mich. 112; *Morgan v. Tweddle*, 120 Mich. 350; *Ferrill v. Dickerson*, 63 Miss. 210; *Capital State Bank v. Lewis*, 64 Miss. 727; *National Bank v. Louisville, N. O. & T. R. Co.*, 72 Miss. 447; *State v. Cook*, 82 Mo. 185; *State v. Schooley*, 84 Mo. 447; *Pearce v. Titworth*, 87 Mo. 685;

Howard v. Heck, 88 Mo. 456; *Pike v. Martindale*, 91 Mo. 268; *State v. Seahorn*, 139 Mo. 582; *Burke v. Brown*, 148 Mo. 309; *State v. Farney*, 36 Neb. 537; *Ives v. Irey*, 51 Neb. 136; *Medland v. Linton*, 60 Neb. 249; *Boston, C. & M. R. Co. v. State*, 64 N. H. 490; *Currie v. Van Horn*, 40 N. J. L. 143; *Landis v. Vineland*, 61 N. J. L. 424; *Lippincott v. Pensauken T'p.* 62 N. J. L. 177; *Cameron's Petition*, 50 N. Y. 502; *Sorchan v. Brooklyn*, 62 N. Y. 339; *Shattuck v. Bascom*, 105 N. Y. 39; *Stebbins v. Kay*, 123 N. Y. 31; *O'Donnell v. McIntyre*, 37 Hun 615; *Railroad Co. v. Reidsville*, 109 N. C. 494; *Hatwood v. Fayetteville*, 121 N. C. 207; *Pickton v. Fargo* (N. D.), 88 N. W. Rep. 90; *Board of Education v. Kingfisher*, 5 Okl. 82; *Hoffman v. Bell*, 61 Pa. St. 444; *Vandemark v. Phillips*, 116 Pa. St. 199; *Whittaker v. Deadwood*, 12 S. D. 608; *Harris v. State*, 96 Tenn. 496; *Coudon v. Galbraith*, 106 Tenn. 14; *Culver v. Hayden*, 1 Vt. 359; *Richardson v. Dorr*, 5 Vt. 9; *Brown v. Wright*, 17 Vt. 97; *Judevine v. Jackson*, 18 Vt. 470; *Taylor v. French*, 19 Vt. 49; *Langdon v. Poor*, 20 Vt. 13; *Lane v. James*, 25 Vt. 481; *Elma v. Carney*, 9 Wash. 466; *Plumer v. Supervisors*, 46 Wis. 163; *Powell v. Supervisors*, 46 Wis. 210; *State v. Keaough*, 68 Wis. 135; *Trenton v. Dyer*, 24 Can. S. C. R. 474.

³ As to directory requirements in general: *Kipp v. Dawson*, 31 Minn. 373.

the protection of the public, and not of the taxpayer.¹ So in general the fixing of an exact time for the doing of an act is only directory where it is not fixed for the purpose of giving the party a hearing, or for any other purpose important to him.²

¹ See *Hale v. Cushing*, 2 Greenl. 28; *Scarborough v. Parker*, 53 Md. 252; *ante*, ch. VIII.

² *Hart v. Plum*, 14 Cal. 148. Where action is to be taken within a certain time, the mere failure of a public officer or of a public board to act within the set time is not fatal, and the requirement as to time may be held directory: *Walker v. Edwards*, 197 Pa. St. 645. Provisions as to the time upon which or within which acts are to be done by a public officer regarding the rights and duties of others are directory unless the nature of the act or language of the legislature makes it clear that the time fixed is by way of limitation: *Buswell v. Board of Supervisors*, 116 Cal. 351. The time in which official persons shall perform designated acts is generally directory: *Baltimore v. Horter* (Md.), 48 Atl. Rep. 445. So held of a statutory provision as to the time of levying omitted or erroneously levied taxes for past years: *State v. Hannibal & St. J. R. Co.*, 113 Mo. 297. So held of a provision in a city charter as to the time when the report of the board of estimates fixing the tax rate is to be sent in: *Ibid.* Where the mayor was required by statute to procure by May 1 a certified abstract of the county assessment as a basis for city tax, a delay until May 12 was not material: *Westport v. McGee*, 128 Mo. 552. A statute requiring a city park board to certify the amount determined by it to be levied as a tax by the county auditor on or before October 1 of each year is, so far as the time is concerned, directory merely, so that a certification made October 14 is a sufficient compliance

with the statute: *State v. West Duluth Land Co.*, 75 Minn. 456. City council's failure to certify to the county auditor, on or before the first Monday in September, the percentage of taxes levied for the ensuing year as required by statute is without prejudice to the taxpayers, and does not prevent the collection of the tax: *Taylor v. McFadden*, 84 Iowa 262. The collection of taxes was not enjoined because they were not levied on the third Monday in July or within ten days thereafter as directed by statute; for the levy, if not made within the time so fixed, could legally be made afterwards: *Sharpe v. Engle*, 2 Okl. 634; *Sharpe v. Maney*, 3 Okl. 105. A statute providing that the school tax shall be levied before the first day of July is merely directory and not mandatory as to the time within which the tax shall be levied: *Walker v. Edwards*, 197 Pa. St. 645. A railroad company was held liable for taxes on its property for the current year, though they were not assessed and levied until after the time prescribed by the statute for the copy to be placed in the collector's hand: *Baltimore, C. & A. R. Co. v. Commissioners* (Md.), 48 Atl. Rep. 853. Provision as to time when commissioner of railroads should compute amount of tax due from railroad company, held directory merely: *Manistee, etc. R. Co. v. Auditor-General*, 115 Mich. 291. Tax assessor's failure to enter the assessment as soon as made upon the book prescribed for the purpose held not to affect the validity of the assessment as against the owner of the assessed property: *State v. Tennessee C., I. & R. Co.*, 94 Tenn. 295. An assessment

When an act is to be done "forthwith" by an officer in connection with tax proceedings, it will in general be held directory, as used simply to secure system, uniformity, and dispatch in

of taxes specially required by statute may be made after the time prescribed therefor, the same to be made as of the time when it would have been done if the law had been observed: *School District v. Cumberland*, 21 R. I. 576. In a statute directing property to be assessed before July 1, the limitation of time is directory: *Boody v. Watson*, 64 N. H. 162. Statutory provisions as to the time of completing, verifying, returning, delivering, or filing the assessment roll held to be directory merely: *Burlington Gas-light Co. v. Burlington*, 101 Iowa 458; *Anderson v. Mayfield*, 93 Ky. 230; *State v. Mining Co.*, 15 Nev. 385; *People v. Haupt*, 104 N. Y. 377; *People v. Jones*, 106 N. Y. 330, 663; *Magee v. Commonwealth*, 46 Pa. St. 358. See *Bradley v. Ward*, 58 N. Y. 401; *Perry County v. Selma*, etc. R. Co., 58 Ala. 456; *Supervisors v. Rees*, 34 Mich. 481; *Atlantic Trust Co. v. Darlington*, 63 Fed. Rep. 76. So is a provision that assessments for local improvements shall be finally passed upon within six months by the board for the revision and correction of improvements: *Matter of Gibbons*, 56 Hun 650; *Matter of Deering*, 14 Daly 89. So is a provision that a school tax shall be assessed within thirty days after the clerk of the district certifies to the assessors the sum to be raised: *Pond v. Negus*, 3 Mass. 230; *Williams v. School Dist.*, 21 Pick. 75. Similar rulings in *Gale v. Mead*, 2 Denio 160; *Gearhart v. Dixon*, 1 Pa. St. 224; *Smith v. Crittenden*, 16 Mich. 152; *Harrison County Com'rs v. McCarty*, 27 Ind. 475. For somewhat similar provisions held to be mandatory, see *Cowgill v. Long*, 15 Ill. 202; *Mix v. People*, 72 Ill. 241. Compare *Eames*

v. Johnson, 4 Allen 382. Where a board constituted to hear and determine complaints of improper assessments gave notice in due form, but failed to meet at the time fixed by law, the levy for that year was held invalid: *Slaughter v. Louisville*, 89 Ky. 112. Under a statute providing that the board of auditors shall meet at the town clerk's office for auditing the town accounts summarily on certain days, a tax based on a certificate of claims audited on days other than those specified is illegal, when objected to by a taxpayer, since the time fixed for such meetings is mandatory: *Chicago & A. R. Co. v. People*, 190 Ill. 20. A provision as to the time of action by the board of review, where a hearing has been had by request, is directory merely: *Faribault Waterworks v. County Com'rs*, 44 Minn. 12. So is a provision limiting the time of session of the board of equalization: *Buswell v. Board*, 116 Cal. 351. Failure to perform strictly at the time prescribed certain ministerial acts required to be performed by a county board of equalization preliminary to correcting an assessment, held not to prevent the board from making a correction: *Birmingham B. & L. Assoc. v. State*, 120 Ala. 403. A statutory provision that the warrants and tax levy are to be delivered to the collector before December 15 is directory only, and a delay does not render them void: *Board of Supervisors v. Betts*, 6 N. Y. Supp. 934. That delinquent tax-lists were not filed in the state auditor's office until after the time prescribed did not prevent title's vesting in the state: *Le Seigneur v. Bessan*, 52 La. An. 187. See *California L. & T. Co.*

the public business.¹ And statutory regulations that are not designed for the protection of the taxpayer, but for the information of officers to promote method, will be deemed directory and not mandatory.² A requirement that each taxpayer fill

v. Weis, 118 Cal. 489. A statute that the auditor-general shall furnish to each county treasurer in the month of October prior to the month of December in the year in which sales are held a statement of all lands in the county that may have been bid in for the state is directory merely: *Garner v. Wallace*, 118 Mich. 387. So is a provision that a delinquent list shall be filed for judicial proceedings five days before the commencement of the term of court: *Leindecker v. People*, 98 Ill. 21. So is a provision that in proceedings to enforce delinquent taxes the answer shall stand for trial at the same or next general or special term of court; delay on state's part for five or six years not a discontinuance: *State v. Baldwin*, 62 Minn. 518. The requirement that a final decree be made upon a petition for the sale of lands delinquent for taxes "at least ten days prior to the time fixed for the sale" is directory: *Hooker v. Bond*, 118 Mich. 255. Where the statute required the county judge, in case of a tax-collector's default to collect and pay over, to hold on his own knowledge, or on the treasurer's complaint, a court within twenty days to try such delinquent collector, this was held to be in point of time directory merely, the time not being prescribed for the collector's benefit, "but rather to quicken the diligence of the judge, so that justice may be promptly administered, and the greater certainty of collection assured: *Stickney v. Hugins*, 10 Ala. 106. A provision that there shall be added to the next year's township taxes the amount of loss sustained by the county through

the town treasurer's delinquency is so far directory that a failure to act at once does not cancel the debt, as the amount may be raised in a subsequent year: *Oceana County v. Hart*, 48 Mich. 319.

¹ *Pickton v. Fargo* (N. D.), 88 N. W. Rep. 90. A statute requiring the county treasurer to file the delinquent tax-list "immediately," and the district clerk "forthwith" to make a copy, is directory only: *Emmons v. First Nat. Bank*, 9 N. D. 583. See *State v. St. Paul Trust Co.*, 76 Minn. 423. An election upon the general question of a tax having occurred in March, 1883, it was held that a levy of it in December, 1883, was soon enough, although the statute required the levy to be made "immediately" after the election: *Walton v. Riley*, 85 Ky. 413.

² *Willard v. Pike*, 59 Vt. 202. Thus statutory provisions, so far as they pertain to form only in regard to a grand list, are directory, and are not conditions precedent to the validity of a tax assessed thereon: *Ibid.* The failure of county authorities to comply with the statute in preparing a statement to the grand jury, does not affect the validity of the tax levied by such officers: *Atlanta Nat. B. & L. Assoc. v. Stewart*, 109 Ga. 80. The provision in the Iowa code for the classification of property by the board of supervisors is directory only: *Missouri Valley & B. R. Co. v. Harrison County*, 74 Iowa 283. So are provisions requiring the assessor to call upon each property owner for a statement of his taxable property, and to leave a notice with him; omission does not affect the validity of the assessment: *Hazzard v. O'Ban-*

out a list of his property to be delivered to the assessor is not mandatory, there being no penalty for non-compliance; and the taxpayer is not shut out from all relief because of his omis-

non, 36 Fed. Rep. 854. When jurisdiction has attached in favor of the tax assessor, then the residue of the proceedings may be regarded as directory, and within the domain of statutes providing against mere irregularities and omissions: *State v. Neosho Bank*, 120 Mo. 161. The statute requiring school district trustees on assessing a tax to "prefix to their tax-list a heading showing for what purpose the different items of a tax are levied" is directory only, and failure to prefix such heading does not vitiate the assessment: *Thomson v. Harris*, 88 Hun 478. A provision that the true value and the equalized value of lands shall appear in distinct columns on the roll is directory only, as the failure to obey it in no way affects the person taxed: *Torrey v. Milbury*, 21 Pick. 64. So putting a special tax in a column by itself on the roll when it should be put with the town tax is equally harmless, and therefore cannot affect the proceedings: *Wall v. Trumbull*, 16 Mich. 228. Compare *Case v. Dean*, 16 Mich. 12; *Silsbee v. Stockle*, 44 Mich. 561. The statute requiring a specific description of property assessed is directory merely, and a failure to comply therewith does not avoid the assessment: *Board of Councilmen v. Farmers' Bank (Ky.)*, 61 S. W. Rep. 458. The fact that the county clerk extends the taxes on the copy of the assessment book made out for him by the collector, instead of on the original book, does not invalidate the tax, as such requirement, being merely for the purpose of securing order, is directory: *State v. Lounsberry*, 125 Mo. 157. The failure of the listers to deposit with the town clerk a list of the real estate assessed

will not invalidate a quadrennial appraisal: *Smith v. Blair*, 61 Vt. 658. The neglect of the county boards of supervisors to direct the amounts of township or school taxes, when nothing is submitted to their discretion, cannot deprive the township authorities of the right to levy such as have been duly voted: *Robbins v. Barron*, 33 Mich. 124; *Upton v. Kennedy*, 36 Mich. 215; *Hunt v. Chapin*, 42 Mich. 24. See *Union Trust Co. v. Weber*, 96 Ill. 346. Under the statute providing that the board of equalization shall levy the requisite taxes for the current year, "and record the same in the proper book," it is not essential to the validity of the tax that it be so entered: *Prouty v. Tallman*, 65 Iowa 354; *Hutchinson v. Oskaloosa*, 66 Iowa 35. A statute giving the owner of property the privilege of deducting from the mortgage the amount of taxes paid on the mortgagee's interest is permissive, not mandatory: *San Gabriel Valley L. & W. Co. v. Witmer Bros. Co.*, 96 Cal. 623. A requirement that the owner's name be given in the published list of delinquent taxes, and, if unknown, that such fact be stated, is directory merely: *McQuade v. Jaffray*, 47 Minn. 326. The clerk's failure to enter the word *sold* in the book opposite the description of the land, as required by the statute, does not defeat the sale: *Playter v. Cockran*, 37 Iowa 258. See, for similar rulings, *Railroad Co. v. Carroll County*, 41 Iowa 153; *Gamble v. Withy*, 55 Miss. 26. The requirement that a tax-judgment shall be entered on the left-hand page of the judgment book is directory only, and non-compliance with it does not render the judgment void: *Countryman v. Wasson*, 78 Minn. 244. The

sion to fill out such a list.¹ Where the statute provides that "the acts herein required between the assessment and commencement of suit shall be deemed directory merely," the omissions of officers to perform the duties required of them between such assessment and commencement constitute no defense to a suit for taxes.² The requirement of a warrant to the town assessors, requiring them to assess the state tax, is directory, as this becomes of no moment if they act without it.³ And manifestly the taxpayer has nothing to do with any accounting by the officer, or with any report or document to be made by him, for the security of the public or for the information of superiors only, and which is not to be warrant for, or to affect in any manner, subsequent proceedings for enforcing the tax.⁴ In the margin many other cases are referred to in which statutory provisions have been decided to be merely directory.⁵

provisions of an ordinance requiring the superintendent of sewers to keep, and submit to the board of aldermen, an account of the cost of constructing sewers, and to report a list of persons deriving a benefit from them, are merely directory, and his neglect so to do does not affect the validity of an assessment: *Collins v. Holyoke*, 145 Mass. 298.

¹ *Merchants' Mut. Ins. Co. v. Board of Assessors*, 40 La. An. 371.

² *State v. Sadler*, 21 Nev. 13.

³ *Alford v. Collin*, 20 Pick. 418.

⁴ *Tweed v. Metcalf*, 4 Mich. 578. The clause in the tax-warrant, "and you are hereby directed to settle with the selectmen by the 20th day of September next," is merely directory, and does not limit the collector's power to that time: *Picket v. Allen*, 10 Conn. 145. The requirement of the filing of a certificate of approval of a local work will be held directory where it does not appear to be intended as a prerequisite to a valid assessment: *Brady v. Bartlett*, 56 Cal. 350. Where an affidavit to the delinquent list is required for the purposes of record, the requirement will be held only directory if the rec-

ord is made without it: *Succession of Edwards*, 32 La. An. 457. The collector's omission to enter upon his warrant the true day and year when he received it does not invalidate his proceedings under it: *Goodwin v. Perkins*, 39 Vt. 598. The right of the commonwealth to defeat a tax on the market value of the capital stock of a corporation is not defeated by the neglect of the city assessors to make return of the corporation to the treasurer of the commonwealth as required by statute: *Commonwealth v. New England S. & T. Co.*, 13 Allen 391.

⁵ *Craig v. Bradford*, 3 Wheat. 594; *United States v. Kirkpatrick*, 9 Wheat. 720; *United States v. Dandridge*, 12 Wheat. 64; *State v. Click*, 2 Ala. 25, 26; *Savage v. Walsh*, 26 Ala. 620; *McKune v. Weller*, 11 Cal. 49; *Adams v. Seymour*, 30 Conn. 402; *Vance v. Schuyler*, 1 Gilm. 160; *Webster v. French*, 12 Ill. 302; *Coombs v. Steere*, 8 Ill. App. 147; *State v. McGinly*, 4 Ind. 7; *Stayton v. Hulings*, 7 Ind. 144; *Noland v. Busby*, 28 Ind. 154; *New Orleans v. St. Romes*, 9 La. An. 573; *Hale v. Cushing*, 2 Greenl. 218; *Muzzy v. White*, 3 Greenl. 290;

Retrospective taxation. Unless the constitution prohibits retrospective legislation, the basis of an assessment of taxes may as lawfully be retrospective as the reverse; that is to say, it may as well have regard to benefits theretofore received, as to those which may be assessed thereafter.¹ It has therefore

Scarborough v. Parker, 53 Me. 252; State v. County Com'rs, 29 Ind. 516; Pond v. Negus, 3 Mass. 230; Lowell v. Hadley, 8 Met. 180; Parks v. Goodwin, 1 Doug. (Mich.) 56; People v. Doe, 1 Mich. 451; Hickey v. Hinsdale, 8 Mich. 267; People v. Hartwell, 12 Mich. 508; Banning v. McManus, 51 Minn. 289; Burlington, etc. R. Co. v. Saline County, 12 Neb. 396; Ex parte Heath, 3 Hill, 43; Striker v. Kelly, 7 Hill, 29; Jackson v. Young, 5 Cow, 269; Allen v. People, 6 Wend. 486; People v. Peck, 11 Wend. 604; People v. Holley, 12 Wend. 481; Elmendorf v. New York, 35 Wend. 693, 696; Gale v. Mead, 2 Denio 252; Doughty v. Hope, 3 Denio 252; People v. Cook, 8 N. Y. 67; Lyth v. Buffalo, 48 Hun 175; Allen v. Parish, 3 Ohio 187; Fry v. Booth, 19 Ohio St. 25; Lawrence v. Speed, 2 Bibb 401; Hayden v. Dunlap, 3 Bibb 216; Edwards v. James, 13 Tex. 52; Holland v. Osgood, 8 Vt. 276, 280; Corliss v. Corliss, 8 Vt. 373, 390; Huey v. Van Wie, 23 Wis. 613.

¹Locke v. New Orleans, 4 Wall. 172; New Orleans v. Rhenish Westphalian Lloyds, 31 La. An. 781; People v. Gold Co., 92 N. Y. 383; State v. Graham, 8 Am. & Eng. Corp. Cases, 500; Mercur, etc. Co. v. Spry, 16 Utah 222. The assessment of property for taxation may be provided for by retrospective laws: State v. Memphis & C. R. Co., 14 Lea 56. The legislature may enact retrospective statutes whenever it is not restrained by constitutional provisions: State v. Whitteley, 17 Wash. 447. It is not competent in North Carolina to levy retroactive taxes: Young v. Henderson, 76 N. C. 420. A constitutional provision prohibiting retrospective

laws avoids a statutory amendment adding five years to the period for which extra taxes might be levied under the Ohio one-mile pike law: Miller v. Hixson (Ohio), 59 N. E. Rep. 749. It also avoids an act for the refunding of taxes erroneously paid, in so far as such act imposes an obligation on account of past transactions: Hamilton County Com'rs v. Rosche, 50 Ohio St. 103. Legislation for the enforcement of back taxes is not forbidden by such a prohibition where no new obligation is imposed: Sturges v. Carter, 114 U. S. 511; New Orleans v. Railroad Co., 35 La. An. 679; State v. Heman, 70 Mo. 441; Gager v. Prout, 48 Ohio St. 89. Nor does such a prohibition render unconstitutional an act to provide for the collection of arrearages of taxes for past years: Wilmington v. Cronly, 122 N. C. 383. And such a prohibition is not violated by a statute requiring persons desiring to redeem lands sold to the state for taxes to pay interest upon such taxes, although when the taxes were laid there was no law authorizing the collection of interest on them; it being in the power of the state to waive its tax-title on such terms as it deems just: League v. State, 93 Tex. 553. The prohibition avoids the penalty required to be added to the omitted taxes for previous years: Gager v. Prout, 48 Ohio St. 89; see Redwood County v. Winona & St. P. L. Co., 40 Minn. 512. The penalty authorized by a retrospective provision for the taxing of omitted property can be enforced only as to taxes which should have been enforced since the passage of the provision: Galusha v.

been very properly held that there is no constitutional or other legal objection to the levy of taxes to pay for municipal improvements which had previously been made,¹ or to the assessment or re-assessment of taxes upon property which had escaped taxation, or had been grossly undervalued for taxation in previous years.² Nor in apportioning the tax between in-

Wendt (Iowa), 87 N. W. Rep. 512. In New Jersey a statute providing that the cost heretofore or hereafter incurred by any city of the third class for improving sidewalks shall be a lien upon the abutting lands and may be collected in the same manner as taxes are in cities, is unconstitutional because retroactive: *Waln v. Beverly*, 55 N. J. L. 544. An inheritance tax which applies to estates that have been probated before its passage, but are to be distributed after it takes effect, is not unconstitutional as to such estates: *Gelsthorpe v. Furnell*, 20 Mont. 299. It is competent to make, even as to mortgages previously given, a provision that the assessor is to deduct from the value of land a mortgage upon it if the owner of the land claims the deduction: *State v. Runyon*, 41 N. J. L. 98. Statutes providing for a re-assessment where an assessment for municipal improvements is invalid are constitutional, and the re-assessment may be made to date back to the date of the original assessment, notwithstanding mesne encumbrances: *Sinking Fund Com'rs v. Linden*, 40 N. J. Eq. 27. Where, at the time a delinquent tax-sale was had, there was no statute giving the purchaser at a void sale a lien for money paid or for subsequent taxes, an act thereafter passed does not give such a lien: *Blackwell v. First Nat. Bank (N. M.)*, 63 Pac. Rep. 43.

¹*Spencer v. Merchant*, 125 U. S. 345; *Lombard v. West Chicago Park Com'rs*, 181 U. S. 33; *Cleveland v. Tripp*, 13 R. L. 50.

²*Sturges v. Carter*, 114 U. S. 511; *Winona, etc. Land Co. v. Minnesota*, 159 U. S. 526; *Weyerhaeuser v. Minnesota*, 176 U. S. 550; *People v. Seymour*, 16 Cal. 332; *Galusha v. Wendt (Iowa)*, 87 N. W. Rep. 512; *New Orleans v. Railroad Co.*, 35 La. An. 679; *Redwood County v. Winona & St. P. L. Co.*, 40 Minn. 212; *State v. Weyerhaeuser*, 68 Minn. 353, 72 Minn. 519; *Wellshear v. Kelly*, 69 Mo. 343; *State v. Herman*, 70 Mo. 441; *Gager v. Prout*, 48 Ohio St. 89; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406. By the Wisconsin statute the re-assessment of omitted property is authorized although such property has passed out of existence: *State v. Pors*, 107 Wis. 420. A city council may be vested by the legislature with power to assess such taxable property as has been omitted or concealed by the owners: *Owensboro v. Callaghan (Ky.)*, 17 S. W. Rep. 278. Where, under a decision of the court of last resort, certain property remained untaxed for several years, after which the court decided that the law had been misinterpreted, it was decided that what had been held to be the law during the years for which taxes were claimed must govern property rights of that period: *Franklin County Court v. Louisville & N. R. Co.*, 84 Ky. 59. In the absence of a showing to the contrary it will be presumed that back taxes assessed were the same which the owners of the land would have had to pay had the land not escaped assessment: *Williamson v. Mimms*, 49 Ark. 336. Property which has es-

dividuals is there any valid objection to making it on consideration of a state of things that may now have come to an end; as where a tax is imposed on the extent of one's business for the preceding year instead of upon an estimate of the business for the year to come.¹ Where taxes are levied for a series of years upon the same valuation of property, they are necessarily retrospective, but not therefore incompetent,² though one may be taxed upon property which he has long ceased to own when the tax is levied. But there is commonly a presumption that any new tax law was not intended to reach back and take for its standard of apportionment a state of things that may no longer be in existence. "New burdens," it is very justly said, "ought always to be prospective,"³ and it is reasonable to sup-

ported taxation through the negligence of the proper officials is subject to taxation in the hands of a subsequent purchaser for the years it has escaped: *Kansas v. Hannibal & St. J. R. Co.*, 81 Mo. 285; *State v. Fullerton*, 143 Mo. 682. But a tax imposed on property retrospectively for years when there was no law for taxing it will be invalid as against one who has become a *bona fide* purchaser of it in the meantime: *State v. St. Louis, etc. R. Co.*, 77 Mo. 202. A legislature probably cannot constitutionally enact a retroactive law imposing taxes for previous years upon property which was not during such years subject to taxation under any valid law: *First Nat. Bank v. Covington*, 103 Fed. Rep. 523. In Indiana the county assessor has been held to have power to reach property that was omitted from the tax-list before the statute authorizing him to assess such property went into effect: *Saint v. Welsh*, 141 Ind. 382. So with the state railroad commission in Mississippi: *Yazoo & M. V. R. Co. v. Adams*, 73 Miss. 229. In Maryland the county commissioners cannot levy for past years, but are restricted to a levy for the year: *Baltimore, C. & A. R. Co. v. Commissioners (Md.)*, 49 Atl. Rep. 853. In

Hunter Stone Co. v. Woodard, 152 Ind. 474, it is said that nothing but payment will discharge the state's claim for taxes against omitted property, and the general law must be liberally construed in aid of the taxing power. A claim for taxes omitted from the assessment for previous years by a person since deceased will not be sustained in the absence of testimony as to what property decedent had during those years: *Galusha v. Wendt (Iowa)*, 87 N. W. Rep. 512.

¹ *Drexel v. Commonwealth*, 46 Pa. St. 31; *People v. Gold Co.*, 92 N. Y. 383. Where a twenty-year exemption expired in March, and an assessment was made in April for the current year, the party assessed was held entitled to no abatement in respect of the time that had already run: *McClellan v. Railroad Co.*, 11 Lea 336.

² See *Wolf v. New Orleans*, 4 Wall. 172.

³ *Commonwealth v. Pennsylvania Ins. Co.*, 13 Pa. St. 165. In that case it was decided that a tax measured by dividends "from and after January 1, 1841," would not apply to a dividend declared by the proper committee December 30, 1840, but not passed upon by the directors

pose the legislature has intended that they should be. Such a supposition is in harmony with the general rule of law which requires that the courts "always construe statutes as prospective and not retrospective, unless constrained to the contrary course by the rigor of the phraseology."¹ This rule applies also

until January 4, 1841. A statute taxing that which has not before been taxed will not be deemed retroactive where such construction is not imperatively required by the language used: *New England Mortg. Security Co. v. Montgomery County Revenue Board*, 81 Ala. 110.

¹ *Woodward, J.* in *Price v. Mott*, 52 Pa. St. 315, 316. And see *New England Mortg. Security Co. v. Board of Revenue*, 81 Ala. 110; *Fagg v. Martin*, 53 Ark. 449; *Thames Manuf. Co. v. Lathrop*, 7 Conn. 350; *Marsh v. Chestnut*, 14 Ill. 223; *People v. Thatcher*, 95 Ill. 109; *People v. Peacock*, 98 Ill. 172; *Lang v. Clapp*, 103 Ind. 17; *Niklaus v. Conkling*, 118 Ind. 289; *Hennel v. Board of Com'rs*, 132 Ind. 32; *Davidson v. Lindop*, 36 La. An. 765; *Reed v. Creditors*, 39 La. An. 115; *Parham's Succession*, 51 La. An. 980; *Gerry v. Stoneham*, 1 Allen 319; *Clark v. Hall*, 19 Mich. 356; *Fuller v. Grand Rapids*, 40 Mich. 395; *Auditor-General v. Iosco Circuit Judge*, 58 Mich. 345; *Seymour v. Peters*, 67 Mich. 415; *Hall v. Perry*, 72 Mich. 202; *McNaughton v. Martin*, 72 Mich. 276; *Shaw v. Morley*, 89 Mich. 313; *Auditor-General v. Bay Supervisors*, 106 Mich. 662; *Pierpont v. Osmun*, 118 Mich. 472; *Norris v. Hall*, 124 Mich. 170; *Selden v. Coffee*, 55 Miss. 41; *Caruthers v. McLaren*, 56 Miss. 371; *Vaughan v. Swayzie*, 56 Miss. 704; *Capital State Bank v. Lewis*, 64 Miss. 727; *Carlisle v. Goode*, 71 Miss. 453; *State v. Wabash, St. L. & P. R. Co.*, 97 Mo. 296; *Warren R. Co. v. Belvidere*, 35 N. J. L. 584; *State v. Newark*, 40 N. J. L. 92; *Citizens' Gas Light Co. v. Alden*, 44 N. J. L. 648; *Hunt v. State*, 48 N. J. L. 613;

Williamson v. Railroad Co., 29 N. J. Eq. 311; *Burnet v. Dean* (N. J. Eq.), 46 Atl. Rep. 532; *People v. Albany Ins. Co.*, 92 N. Y. 458; *Matter of Miller*, 110 N. Y. 216; *Matter of Trustees of Union Coll.*, 129 N. Y. 308; *People v. Reliance Marine Ins. Co.*, 70 Hun 554; *Tyler v. Cass County*, 1 N. D. 369; *Metz v. Hagerty*, 51 Ohio St. 521; *Philadelphia v. Ferry R. Co.*, 52 Pa. St. 177; *Mills v. Charleston (S. C.)*, 38 S. E. Rep. 226; *Shelby County v. Mississippi & T. R. Co.*, 16 Lea 401; *McPhail v. Burris*, 42 Tex. 142; *Peters v. Auditor*, 33 Grat. 368; *Fowler v. Fairchild*, 3 Wash. 747; *Boorman v. Juneau County*, 76 Wis. 550. A statute which provides that a tax shall not be vitiated by any error or informality not affecting the substantial justice of the tax itself, does not apply to taxes levied before the law was passed: *Gage v. Nichols*, 135 Ill. 128. Assessment proceedings had while a statute making assessments for public improvements payable in five instalments was in force, and by virtue of an ordinance passed while such act was in force, were not affected by an amendatory act providing for ten instalments: *Merriam v. People*, 160 Ill. 555. A statutory provision giving to tax process superiority over liens and mortgages will not be applied to those previously in existence: *Finn v. Haynes*, 37 Mich. 63. A law requiring the county to hold harmless the purchasers of land at a void tax sale applies only to sales made after it took effect: *Norris v. Burt County*, 56 Neb. 295. A law declaring that certain defenses shall not be made to tax-deeds until the redemption

to constitutional provisions;¹ and it obtains not only as a construction of the grant of power, but also as to all the incidents;² though a remedial provision may well be presumed to have

money is paid will not apply to prior sales: *Conway v. Cable*, 37 Ill. 82. In *Allen v. Drew*, 44 Vt. 174, an act was construed so as to govern the proceedings by one subsequently approved, the two having been pending together, and the one first approved expressly in terms referring to the other. A statute making mortgagees personally liable for taxes on the land after taking possession, held applicable to mortgages given before but under which the mortgagees took possession after the statute was passed: *Andrews v. Worcester, etc. Ins. Co.*, 5 Allen 65. An amendment to a tax-law making a county guarantor to the state of the validity of the tax and the value of the security is to have prospective operation only: *Auditor-General v. Supervisors*, 36 Mich. 70. A statute amending a former act so as to limit to six years the right of a purchaser at an invalid sale to obtain reimbursement from the county is prospective in its operation, and does not affect the rights of a purchaser at a sale prior to its passage: *Reid v. Albany Supervisors*, 128 N. Y. 364. Collateral inheritance tax-law held not applicable to property collaterally devised by one who died before the act took effect but whose will was probated subsequently: *Lombard's Appeal*, 88 Me. 587; see *State v. Switzler*, 143 Mo. 287, and *Sloane's Estate*, 154 N. Y. 109. A statute providing that judgments and decrees vacating tax-deeds shall be conditioned on reimbursing the grantee is not retrospective: *Riverside Co. v. Townsend*, 120 Ill. 9. Laws providing that a sheriff's deed for land sold to pay taxes shall be presumptive evidence of certain material facts do not affect sales made

prior thereto: *Eastern Carolina L. etc. Co. v. State Board*, 101 N. C. 35. A statute extending the time for redemption from a tax-sale cannot legally apply to a sale made prior to its passage: *State v. Fylpaa*, 3 S. D. 586. A statute exempting certain property from taxation does not exempt such property from taxes assessed—though not actually levied—before the act takes effect: *Association v. Mayor, etc.*, 104 N. Y. 581; *People v. Commissioners*, 142 N. Y. 348; *In re American Fine Arts Soc.*, 151 N. Y. 621; *Ætna Life Ins. Co. v. New York*, 153 N. Y. 331. A statute providing that the personal estate of certain corporations, including religious corporations, shall be exempt from taxation, and that the collateral inheritance act shall not apply to them, does not apply to a tax due and payable before its passage: *Sherrill v. Christ Church*, 121 N. Y. 701.

¹ *New Orleans v. Vergnole*, 33 La. An. 35; *New Orleans v. Meister*, 33 La. An. 646; *New Orleans v. Eclipse, etc. Co.*, 33 La. An. 647; *Parham's Succession*, 51 La. An. 980; *Mercur, etc. Co. v. Spry*, 16 Utah 222. Exemptions by constitution are not retroactive: *New Orleans v. L'Hote*, 35 La. An. 1177; *State v. New Orleans*, 40 La. An. 697; *Parham's Succession*, 51 La. An. 980.

² In *Gerry v. Stoneham*, 1 Allen 319, a statute providing that where a party was assessed more than his due and legal proportion, the tax and assessment should be void only for the excess, and a recovery by suit should be limited to the excess, was held not applicable to pending actions. See *Slocum v. Fayette County*, 61 Iowa 169, for a case in which a statute shortening the time for taking appeal from assessments was held ap-

been intended to reach back for the purposes of justice.¹ And in cases where a tax is levied to meet expenses previously incurred, or to pay the cost of something of which the persons

aplicable to those previously made. It has been held not giving a retroactive effect to a law providing for judicial proceedings in tax cases, when it is applied to unpaid taxes which had been levied before its passage: *Hosmer v. People*, 96 Ill. 58. A law for the raising of taxes is not retroactive merely because of its fixing the amount to be raised by the business of the preceding year: *People v. Gold Co.*, 92 N. Y. 383. A statute providing that after taxes have become delinquent the treasurer shall issue delinquency certificates, etc., is not retrospective in applying to taxes of previous years which were not delinquent at the time of the passage of the act: *State v. Whittlesey*, 17 Wash. 447. An act providing that no purchaser of land for taxes shall be entitled to a deed unless he has complied with the conditions of the act in regard to serving notice on the owner of the land is not retrospective though applicable to sales made before its passage, since it in no way affects the sale or precedent stages of the proceeding: *Gage v. Stewart*, 127 Ill. 207; see *Herrick v. Niesz*, 16 Wash. 74. A city which had abandoned its special charter and organized under the general law for the incorporation of cities of the second class was held authorized to sell, under the provisions of the general law, lands for delinquent taxes for years prior to as well as after the reorganization: *State v. Tufts*, 108 Mo. 418. Under the Iowa code providing that any municipal corporation may, if by ordinance it so elects, cause all delinquent assessments and taxes to be certified to the county auditor for collection, a city council may order assessments for street improvements completed at

the time of the passage of the ordinance to be so certified: *Shaw v. Des Moines County*, 74 Iowa 679. The general assembly has the power to amend a city's charter so as to change the laws touching the advertisement for sale of property for taxes, and such act is not unconstitutional because it applies to taxes due at the time it was enacted: *Du Bignon v. Mayor*, 106 Ga. 317. The law prevailing when judgment confirming an assessment roll was rendered was held to govern in regard to the certification of the roll and judgment, and in regard to the issue of the warrant for collection, there being nothing in an amendatory statute indicating any intention to affect proceedings instituted before it took effect: *Murphy v. People*, 120 Ill. 234. In matters relating to inheritance taxes the rights of parties are governed by the law in force when the right of succession accrued, but the procedure by that in force when proceedings are instituted for their appraisal: *Matter of Davis's Estate*, 149 N. Y. 539. The rights and liabilities of a tax-sale purchaser and the county are to be determined by the statutes in force when the void sale occurred: *Norris v. Burt*, 56 Neb. 295. So with the right to redeem from a tax-sale and the notice of expiration thereof: *Kipp v. Johnson*, 73 Minn. 34. Where a later charter provided that the expense of street improvements shall be levied according to frontage, an assessment made by value after the charter took effect was invalid, though the improvement was ordered under the former charter: *Wilson v. Seattle*, 2 Wash. 543.

¹ See *State v. Pors*, 107 Wis. 420. A statute that merely varies the

to be taxed have already had the benefit, any presumption against an intent to give the law retroactive operation may be overcome by the apparent justice of such a construction.¹

mode of procedure in proceedings for the abatement of taxes may properly be applied to causes of action which accrued before its passage, as well as to those accruing thereafter: *Wolfeborough Bank's Petition*, 69 N. H. 84. If a statute authorizing the foreclosure of tax liens, only authorizes an additional remedy, it is not therefore unconstitutional though applicable to taxes then due: *Schoenheit v. Nelson*, 16 Neb. 235. A statutory amendment decreasing the rate of interest and advertising charges on delinquent taxes was held to apply to all taxes delinquent when the amendment took effect: *Webster v. Auditor-General*, 122 Mich. 482. The Louisiana statute which declares that "any action to invalidate the titles to any property purchased at tax-sale, under and by virtue of any law of this state, shall be prescribed by the lapse of three years from the date of such sale," is legitimately retrospective, and operates on tax-sales made prior to its passage, at least from the date of the law: *Barrow v. Wilson*, 39 La. An. 403.

¹ An act provided for the re-assessment of the property of certain companies for certain years, and the collection of taxes thereon which should have been collected for those years, deducting what may already have been paid under former erroneous assessments. Held, that such an act was not invalid because it taxed retrospectively. It does not undertake to impose new burdens upon the companies, but to charge the taxable property which has escaped its share of common burdens. Held further, that it was not void for lapse of time. The tax as a specific debt does not become due until the tax-

able property is listed and valued and a definite per centum affixed to such valuation. Nor does the state forfeit rights by its officers' inertness: *North Carolina R. Co. v. Commissioners*, 82 N. C. 259. A statute may authorize the re-assessment of personalty omitted from assessment prior to its enactment, since it creates no new obligation, but is purely remedial: *State v. Pors*, 107 Wis. 420. A state board of valuation and assessment has power to make retrospective assessments of franchises omitted from taxation for previous years: *Louisville & J. Ferry Co. v. Commonwealth (Ky.)*, 57 S. W. Rep. 624. A statute providing that "the board of review shall first assess all property subject to assessment which shall not have been assessed by the assessors," covers cases arising as well before the act took effect as afterwards: *People v. Sellars*, 179 Ill. 170. A statute making it the duty of the sheriff to report, and the county clerk to enter on the assessor's book and certify to the auditor, all property that may, for any year or years, have been omitted by the assessor, or which corporations may have omitted to list, applies equally to omissions occurring before and since it was enacted: *Louisville Water Co. v. Commonwealth (Ky.)*, 34 S. W. Rep. 1064. Under the Illinois drainage act it was held proper for the commissioners to include in a re-classification, to pay bonds issued prior to the act, lands which were not assessed for benefits when the assessment and issue of bonds were made; the act not indicating that it was prospective only in its operation, and it simply providing a means for the correction of mistakes in the as-

Repeal of tax-laws. The rule favoring a prospective construction is applicable to statutes which repeal tax-laws. Accordingly it is held that where such a statute is not made retroactive a tax assessed before the repeal is collectible afterwards;¹

assessment of benefits, and not interfering with vested rights, as the property owner acquired none under the assessment: *Boul v. People*, 127 Ill. 240. A statute providing that when a tax-sale should be set aside and the money refunded thereon by a county, the school district should reimburse the county its share of the expense, was held to apply to a tax laid before the enactment of the statute, but set aside afterwards: *School District v. Allen County*, 22 Kan. 568. A statutory provision that a contractor might maintain an action to foreclose his lien for work done on a street improvement, and might collect therein a reasonable attorney's fee, applied to an assessment levied before the passage thereof: *Dowell v. Talbot Paving Co.*, 138 Ind. 675.

¹ *State v. Sloss*, 83 Ala. 93. When a tax system is revised, and a former law repealed, the legislative intent is assumed, in the absence of any provision to the contrary, to be of prospective force only, and prior valid assessments are not affected thereby: *Smith v. Kelly*, 24 Or. 464; *Alliance Trust Co. v. Multnomah County (Or.)*, 63 Pac. Rep. 498. See *Warren R. Co. v. Belvidere*, 35 N. J. L. 587. Where the assessor had added to the valuation of the property listed by him a penalty for neglect to make out a sworn list, taxes levied thereon may be collected, though the statute imposing the penalty was repealed after the assessment: *Hartford v. Champion*, 58 Conn. 268. If an ordinance levying a special assessment is repealed after the confirmation of the assessment by the county court, the unpaid instalments of the assess-

ment do not fall with the repeal of the ordinance: *People v. McWethy*, 165 Ill. 222. In Indiana it has been said that the repeal of a statute under which taxes are assessed puts an end to the right to collect them unless the repealing statute contains a provision preserving the taxes and the right to collect them: *Gorley v. Sewall*, 77 Ind. 316, citing *McQuilkin v. Doe*, 8 Blackf. 581; *Mount v. State*, 6 Blackf. 25; *Blaiden v. Abel*, 6 Iowa 5; *Bryan's Adm'r v. Harvey's Adm'r*, 11 Tex. 311. And see *Clegg v. State*, 42 Tex. 605; *Pacific, etc. Tel. Co. v. Commonwealth*, 66 Pa. St. 70. The repeal of the Indiana tax-law of 1872 did not, however, affect the collection of taxes assessed under earlier laws: *Adams v. Davis*, 109 Ind. 10. The revisions of the Michigan tax-laws made in 1869, 1882, and 1885 are prospective in character, so that sales under any one of those statutes for taxes assessed before the passage of the particular act are precluded: *Auditor-General v. Monroe*, 36 Mich. 70; *Thomas v. Collins*, 58 Mich. 64; *Ball v. Busch*, 64 Mich. 336; *Nester v. Busch*, 64 Mich. 657; *Seymour v. Peters*, 67 Mich. 415; *Humphrey v. Auditor-General*, 70 Mich. 292; *Nitz v. Bolton*, 71 Mich. 388; *Hall v. Perry*, 72 Mich. 202; *McNaughton v. Martin*, 72 Mich. 276; *Nowlen v. Hall (Mich.)*, 87 N. W. Rep. 222. And stringent provisions therein, designed to favor tax-titles, must be understood to apply to cases originating under the revision in which such provisions are contained: *Clark v. Hall*, 19 Mich. 355; *Smith v. Auditor-General*, 20 Mich. 398. That revision, however, contained a section which required every person redeeming from the tax sale to pay, not only the

and where taxes are levied under a law which is repealed by a subsequent act, unless it appears clearly that the legislature intended the repeal to work retrospectively, it will be assumed that it intended the taxes to be collected according to the law in force when they were levied.¹ It is also held that the repeal of a law under which a tax has been levied does not discharge the lien of the tax.² But the repeal of a tax-law without saving words puts an end to all right to levy taxes thereunder, even in cases already begun,³ and does away with all penalties for non-payment.⁴ The repeal, however, cannot affect rights that

redemption money with heavy interest to the purchaser, but also a penalty of twenty-five per cent. to the state. Now there was no more reason and no more justice in the state's exacting a penalty for the privilege to one party to redeem from the tax purchase of another than there would be for demanding a like penalty for the privilege of redeeming from an execution sale, or for voluntarily paying an honest debt; the exaction, if legal — which may well be questioned — was unjust and impolitic, for it tended to bring about the forfeiture of estates, and every state is interested that this shall not happen to its citizens. It was therefore held to be a reasonable presumption, when this provision was repealed, that the state intended the repeal to apply to past as well as to future sales: *People v. County Treasurer*, 32 Mich. 260. Compare *Tinslar v. Davis*, 12 Allen 79, which was a strong case for the application of the opposite presumption.

¹ *Oakland v. Whipple*, 44 Cal. 303.

² *Gardenhire v. Mitchell*, 21 Kan. 83; *State v. Waterville Savings Bank*, 68 Me. 515. A statute relating to the assessment, levy, and collection of taxes does not apply to past-due taxes which had become a lien prior to its passage: *Danforth v. McCook County*, 11 S. D. 258. For a case of destruction of lien by repeal of the

statute, see *Gull River Lumber Co. v. Brock*, 6 N. D. 276.

³ *Ross v. Lane*, 11 Miss. 695; *Abbott v. Britton*, 23 La. An. 511. Statutory remedies for the enforcement of a tax are gone when the statute is repealed without an express saving: *Mount v. State*, 6 Blackf. 25; *McQuilkin v. Doe*, 8 Blackf. 581; *St. Joseph County Court v. Ruckman*, 57 Ind. 96; *French v. State*, 53 Miss. 651. This has been held to be so, even as to assessments in process of collection: *Marion, etc. Gravel Road Co. v. Sheeth*, 53 Ind. 35. An amendment to the city and village act having been passed without a saving clause, the amended section governs all subsequent proceedings had for the levying of a special tax for a local improvement, though the improvement was made before the passage of the amendment: *Palmer v. Danville*, 166 Ill. 42.

⁴ *Rex v. Justices, Burr* 456; *Schooner Rachel v. United States*, 6 Cranch 329; *Maryland v. Baltimore, etc. R. Co.*, 3 How. 534; *Norris v. Crocker*, 13 How. 429; *State v. Jersey City*, 37 N. J. L. 39; *Commonwealth v. Standard Oil Co.*, 101 Pa. St. 119; *United States Trust Co. v. Territory (N. M.)*, 62 Pac. Rep. 987. In North Dakota it is held that the repeal of a penal statute does not affect penalties that have accrued: *Wells County v. McHenry*, 7 N. D. 246. The same case holds that

have become vested under the repealed law;¹ and it is usual to provide in tax-revisions and in any change of tax-laws for the saving of accrued rights and of pending proceedings.²

where a complete new revenue law is clearly prospective in its operation there is nothing in its provisions inconsistent with the continued existence of the old statutes regulating interest on delinquent taxes. Accrued penalties saved by general provision: *Chicago, M. & St. P. R. Co. v. Hartshorn*, 30 Fed. Rep. 541.

¹ *Thompson v. Commonwealth*, 81 Pa. St. 314. The repeal of a statute securing to the purchaser of land at a void tax-sale a lien on the land for money paid by him therefor does not affect liens existing, complete, and vested before the repeal: *Capital State Bank v. Lewis*, 64 Miss. 727. So, the repeal of a statute providing that if a tax-sale of lands shall prove to be invalid, the purchaser shall be entitled to recover from the owner the amount of the taxes paid by him subsequent to the sale, and to have the same adjudged against the land, does not affect a right to recover which had vested before the repeal: *St. Louis, L. M. & S. R. Co. v. Alexander*, 49 Ark. 190. Where, after a tax had been voted in aid of a railroad, and after the company had expended, on faith of the vote, money in construction, the act authorizing aid was repealed before levy of the tax, the repeal did not take away the company's right to the tax: *Burges v. Mabin*, 70 Iowa 633. A railroad company's charter having conferred upon municipalities power to subscribe to its stock, by implication, power to levy taxes to meet the obligation, a subsequent general law limiting the rate of taxation did not apply: *Peoria, D. etc. R. Co. v. People*, 116 Ill. 401.

² *Puget Sound Nat. Bank v. King County*, 62 Fed. Rep. 546; *Dunkle v.*

Herron, 115 Ind. 470; *Indianapolis v. Morris* (Ind. App.), 58 N. E. Rep. 510; *Gaither v. Green*, 40 La. An. 362; *Fletcher v. Rose*, 104 Mich. 424; *In re Moore's Estate*, 90 Hun 162; *Wilmington v. Cronly*, 122 N. C. 388; *Washington Nat. Bank v. King County*, 9 Wash. 607. As to what is a "proceeding" within the meaning of a saving clause of a repealing statute, see *Raymond v. Cleveland*, 42 Ohio St. 522. Where a city charter has been repealed with a saving of acts done and rights accrued, the assessment for a sidewalk improvement commenced before the new charter took effect should be made pursuant to the old charter: *Greensborough v. McAdoo*, 112 N. C. 359. The saving clause in the charter of Greater New York was held to be comprehensive enough to enable an owner to have a review of an assessment for a local improvement under the law existing when it was made: *In re Munn*, 165 N. Y. 149. The rights acquired by tax-title purchasers under previous statutory provisions to reimbursement when deeds should be adjudged invalid were preserved by the repealing act of 1882: *Tillotson v. Saginaw Circuit Judge*, 97 Mich. 585. When a statute became operative the assessment under a former law was completed, but certain appeals were pending. Held, that the passage of the new law with no express retroactive terms did not destroy or affect the proceedings already taken: *Appeal Tax Court v. Railroad Co.*, 50 Md. 274. Under a statute providing that no act of the general assembly shall affect a suit pending at the time of its passage, an act legalizing the quadrennial appraisal of 1894 of a certain city

Repeals by implication. A revenue law, like any other statute, may be repealed by implication. But there is always a presumption, more or less strong according to circumstances, that a statute is not intended to repeal a prior statute on the same subject unless it does so in express terms. Without a repealing clause, the two may stand and have effect together, unless they are inconsistent; and in that case to the extent of the inconsistency the later will repeal the earlier; but even then the two must be given effect so far as practicable,¹ for repeals by implication of revenue and collection laws are not favored.² In the case of grants of power to tax — or indeed for other purposes — to municipal bodies, the presumption that it was not intended to modify or repeal these by subsequent general legislation is so strong as to be almost conclusive. It is not usual to modify or take away special powers by general laws; and if it is intended to do so in any particular case, it is reasonable to suppose the legislature would do so in unequivocal language.³

has no effect on a pending suit to recover taxes based on such appraisal and paid under protest: *Fuller v. Montpelier* (Vt.), 50 Atl. Rep. 544.

¹ See cases collected in Cooley, *Const. Lim.* (5th ed.) 183, and note. Also *United States v. Taylor*, 104 U. S. 216; *Beaumont v. United States*, 25 Ct. Cl. 349; *Auditor v. Franklin School Trustees*, 81 Ky. 680; *Appeal Tax Court v. Western, etc. R. Co.*, 50 Md. 274; *Pons v. State*, 49 Miss. 1; *State v. Severance*, 55 Mo. 378; *State v. Missouri Pac. R. Co.*, 92 Mo. 137; *Smith v. Kelly*, 24 Or. 464; *Commonwealth v. Chester*, 123 Pa. St. 626; *Wilson, etc. Co.'s Estate*, 150 Pa. St. 285; *Southern R. Co. v. Kay* (S. C.), 39 S. E. Rep. 785; *Warner Iron Co. v. Pace*, 98 Tenn. 707. An act authorizing the state to recover taxes on property which could not be seized and sold by a collecting officer was not repealed by a subsequent revenue law: *Commonwealth v. Louisville* (Ky.), 47 S. W. Rep. 865. And a tax providing for drainage by local assessment is not impliedly repealed by one providing for drainage to be paid

by county taxes: *Duke v. O'Bryan*, 100 Ky. 710. A statute which provides for the taxation of railroads as entireties, and for distributing the assessment among the various counties, repeals previous laws for assessing in the counties locally: *Union Pac. R. Co. v. Cheyenne*, 113 U. S. 516. Statutes impliedly repealed by later inconsistent constitutional or statutory provisions: *Thomason v. Ashworth*, 73 Cal. 73; *Meyer v. Parker*, 41 La. An. 440; *Chicago v. James*, 114 Ill. 479; *Springfield v. London Ins. Co.*, 21 Ill. App. 156; *State v. Hill*, 70 Miss. 106; *Levy v. Newman*, 130 N. Y. 11; *Cincinnati v. Holmes*, 56 Ohio St. 104; *Frontier L. & C. Co. v. Baldwin*, 3 Wyo. 764.

² *Zickler v. Union Bank & T. Co.*, 104 Tenn. 277.

³ *Binkert v. Jansen*, 94 Ill. 283; *Weber v. Traubel*, 95 Ill. 427; *Sparland v. Barnes*, 98 Ill. 595; *Peoria, D. etc. R. Co. v. People*, 116 Ill. 401; *Mayor, etc. v. Jackson*, 89 Md. 589; *Williamsport v. Brown*, 84 Pa. St. 438; *Safe Deposit & T. Co. v. Fricke*, 152 Pa. St. 231; *San Antonio v. Berry*,

When this is not done the general law will be read as intend-

92 Tex. 319; Tacoma L. Co. v. Pierce County Com'rs, 1 Wash. 482; State v. Carson, 6 Wash. 250; Oleson v. Railway Co., 36 Wis. 383; Fire Department v. Tuttle, 48 Wis. 91. The reenactment of a general rule as to taxation of farms divided by a farm line held not to repeal a special law: Casterton v. Vienna, 163 N. Y. 368. A general school-law requiring suits against delinquent taxpayers to be brought in the name of the county superintendent applies only in delinquencies arising under that law, and leaves unrepealed a special act authorizing the district incorporated thereby to levy and collect taxes for school purposes within its limits: Board of Trustees v. Louisville & N.R. Co. (Ky.), 30 S. W. Rep. 60. The rule that a local statute is not repealed by a subsequent general statute inconsistent with it, unless words of repeal are employed for that purpose, is not applicable to the Pennsylvania statute relating to the division of cities into classes according to population; a city which by virtue of its increase in population has passed out of the third class, and taken its place as a member of the second class, must levy and collect its taxes under the system provided for cities of the second class: Commonwealth v. Macferon, 152 Pa. St. 244. In Kansas it is held that when a city of the third class is by the governor's proclamation, under the statute, declared to be a city of the second class, none of the ordinances regulating the levying of taxes is thereby repealed: Ritchie v. South Topeka, 38 Kan. 368. A general law taxing corporations does not repeal a statute exempting a particular railroad from taxation until its net earnings equal six per cent. of the amount invested: Commonwealth v. Philadelphia & E. R. Co., 164 Pa. St. 252. Where the charter of a railroad company provides for the payment of a certain part of its net income in lieu of all taxes, it is not liable for taxes imposed by a subsequent general law: State v. Knox & L. R. Co., 78 Me. 92. The Iowa statute providing that no general laws as to powers of cities organized under the general incorporation act shall be construed to affect laws of cities organized under special charters, unless special reference is made to such cities, does not apply to a law authorizing taxation in aid of railroads: Bartemeyer v. Rohlf, 71 Iowa 581. That a city already had power to appoint assessors for real property did not prevent the taking effect therein of a general statute so as to allow the election of assessors for personalty: Dawson Compress, etc. Co. v. City Council, 107 Ga. 358. It has been held in California that if there is any conflict between a general law and a city charter in regard to the deduction or taxation of debts or credits, the former governs: Security Savings B. & T. Co. v. Hinton, 97 Cal. 214. A constitutional provision requiring all taxes to be levied by general law does not repeal charter provisions for taxation: Kansas v. Johnson, 78 Mo. 661. But in New Jersey it is held that a constitutional provision that "property shall be assessed for taxes under general laws and by uniform rules," puts an end *proprio vigore* to existing special legislation for the assessment of taxes: State v. Newark, 40 N. J. L. 558; State v. Richards, 47 N. J. L. 434; see, also, Cobb v. Elizabeth City, 75 N. C. 1. Yet that provision does not repeal a special law applicable to a single county, providing for taxation therein, where the general law simply uses different machinery to accomplish the same results: West Ho-

ing to leave the special powers in force.¹ On the other hand, special legislation giving powers of taxation to a municipality by name, or to a class of municipalities, will control, *pro tanto*, the existing general law.²

General revisions of tax-laws. A tax-law manifestly intended to embrace and include all legislation on that subject will repeal all provisions of former laws not re-enacted and embraced in it without regard to their consistency or incon-

boken v. Board of Com'rs (N. J.), 49 Atl. Rep. 9. Under that provision, however, a general law concerning sewer assessments supersedes city charter provisions on the same subject: Central N. J. L. etc. Co. v. Bayonne, 56 N. J. L. 297. So, a statute providing for the licensing of dogs was held in New Jersey to supersede any charter power of exacting license fees for dogs: Mulcahy v. Newark, 57 N. J. L. 513. And a general statute making taxes a first lien on real estate, and authorizing sale for taxes, applies to all townships, and repeals inconsistent provisions of special laws providing for the sale of land for taxes in townships: State v. Mullica Committee, 48 N. J. L. 447. The new constitution of Kentucky did not divest city governments of the power of taxation under their charters, or suspend such powers until the legislature should pass laws for the regulation of such powers in accordance with the provisions of the constitution: Byrne v. Covington (Ky.), 21 S. W. Rep. 1050. As to the effect of general legislation upon special charters, see House v. State, 41 Miss. 737; Board of Education v. Aberdeen, 56 Miss. 518; Morris, etc. R. Co. v. Commissioners, 37 N. J. L. 228; Powell's Ex'r v. Richmond, 94 Va. 79.

¹ Covington v. East St. Louis, 78 Ill. 548; Peoria, D. etc. R. Co. v. People, 116 Ill. 401; Clark v. Davenport, 14 Iowa 494; State v. Severance, 55

Mo. 378; Sheridan v. Stevenson, 44 N. J. L. 371; People v. Quigg, 59 N. Y. 83; Cass v. Dillon, 2 Ohio St. 607; Fosdick v. Perrysburg, 14 Ohio St. 472; Rounds v. Maymart, 81 Pa. St. 395; Williamsport v. Brown, 84 Pa. St. 438; Chesapeake, etc. Co. v. Hoard, 16 W. Va. 270; Oleson v. Green Bay, etc. R. Co., 36 Wis. 383.

² Potwin v. Johnson, 108 Ill. 70; Skinner v. Christie, 52 N. J. Eq. 720; Bertha Zinc Co. v. Pulaski Supervisors, 88 Va. 303. In Iowa it was held that where a special law limits the power of a municipal corporation to levy taxes, a subsequent general law will not give power beyond the prior limitation: Clarke v. Davenport, 14 Iowa 494. *Contra*. Butz v. Muscatine, 8 Wall. 575. A grant of power to a municipal corporation to levy a tax for a particular purpose is a repeal, *pro tanto*, of all prior statutory restrictions on the power of taxation: Commonwealth v. Pittsburgh Common Council, 34 Pa. St. 496. So, special authority to a municipality to contract a debt for a specific object may impliedly repeal, *pro tanto*, existing charter limitations upon the right of taxation: Oconto City Water Supply Co. v. Oconto, 105 Wis. 76. A village charter authorizing the village council to grant liquor licenses and to restrain and regulate the sale of liquor does not abrogate the general law of the state prohibiting sales without license: State v. Nolan, 37 Minn. 16.

sistency.¹ But where in such a revision provisions of a former act are identically or substantially re-enacted, those provisions of the earlier statute are not regarded as repealed, but as continued in force.² And where a former law itself repealed provisions of a still earlier statute on a subject not covered by the new general law, those provisions are revived by the repeal of such former law.³

¹Williamson v. New Jersey, 130 U. S. 189; Carroll v. Jaqua, 114 Ind. 246; Barnard v. Gall, 43 La. An. 959; Cromwell v. MacLean, 123 N. Y. 474; People v. Peck, 157 N. Y. 51; In re Huntington's Estate (N. Y.), 61 N. E. Rep. 643; Etna F. Ins. Co. v. Reading, 119 Pa. St. 417; Zickler v. Union Bank & T. Co., 104 Tenn. 277; Fox v. Commonwealth, 16 Grat. 1. A general revision of the laws for railroad taxation which provides a general scheme for assessing and taxing the property as a whole, and for distributing it ratably among the counties and their several precincts according to the length of line in each, necessarily repeals as to such property the power previously existing in a city to tax it on a different plan: Union Pac. R. Co. v. Cheyenne, 113 U. S. 516. An express provision in regard to the assessment of omitted property incorporated into a new general tax-law displaces the provisions of the old law on the subject: People v. Sellars, 179 Ill. 170. A general revenue act was held not to repeal a prior statute relating to the special subject of collateral inheritance taxation, and which was in itself a complete enactment concerning that subject, since the enactment of a general law will not operate to repeal a special law which treats in a particular manner a subject treated in the later law only in a general way: Zickler v. Union Bank & T. Co., 104 Tenn. 277. A statute providing a method of col-

lecting taxes in certain parts of the state was not repealed by a general tax law which expressly excepted from its operation those parts of the state where a local system was in force: Evans v. Phillippi, 117 Pa. St. 226. Where a new general tax-law only repeals such parts of former laws as contravene its provisions, a levy of taxes for the year in which it was enacted on a rating of property under the preceding tax-law was valid: Davenport v. Aplin, 70 Mich. 192; Longyear v. Auditor-General, 72 Mich. 405.

²See Stowe v. Stowe, 70 Vt. 609; Matter of Prime's Estate, 136 N. Y. 347; Commonwealth's Appeal, 128 Pa. St. 603. It is only where the provisions of a repealing statute are identical or practically identical with the provisions in the statute repealed, that those provisions can be considered as continuing in force without intermission: Gull River Lumber Co. v. Brock, 6 N. D. 276. The repeal of a tax-law which makes deeds on tax-sales *prima facie* evidence of title, where it is done by a new law containing a similar provision, will not prevent deeds given under the repealed law being *prima facie* evidence of title; the fair presumption of title being that the legislature intended that rule to be continuous: Blackwood v. Van Vleet, 30 Mich. 118.

³Zickler v. Union Bank & T. Co., 104 Tenn. 277.

CHAPTER X.

CURING DEFECTS IN TAX PROCEEDINGS.

Intimately connected with the construction of tax-laws is the question how far the legislature by other enactments has power to dispense with strict obedience to the regulations prescribed by itself, and which have had for their manifest purpose the protection of the interests of those who are taxed. This is a subject presenting many intrinsic difficulties, and which has given rise to much contrariety in judicial decisions.

Curative laws. An act of dispensation may assume any one of several forms:

1. It may assume the form of a rule of conclusive evidence intended to preclude a departure from the law being proved.
2. It may take the form of a mandate to officers, commanding them to give effect to proceedings that have been taken, and to disregard in doing so any irregularities or other defects.
3. It may be a special curative statute to heal defects in certain specified proceedings which have been before taken.
4. It may be a general curative statute to heal irregularities or defects in any proceedings whatsoever previously taken.
5. It may be a general statute for future cases, which, while marking out a course for the officers to pursue, shall at the same time declare that irregularities shall not vitiate any proceedings that shall be had under the statute.
6. Besides these, there may be either a special or a general law for re-assessing the tax when the proceedings for its collection have proved ineffectual.

Legislation coming under each of these heads is to be met with in the statutes of the several states, and some attention to each seems therefore requisite.

1. *Conclusive rules of evidence.* It is within the province of the legislature to prescribe what rules shall be observed in the production of evidence in court. In the exercise of its authority over this subject, it has sometimes provided that the

burden of proof should be upon one party to a suit rather than the other, and that a particular showing by a party shall make out in his favor a *prima facie* case. This it has full power to do, and it may make the rules which it prescribes apply to controversies previously in existence, even though retrospective legislation be forbidden by the state constitution.¹ Relying upon this undoubted principle of constitutional law, the legislature has in many cases adopted enactments that certain reports, papers, or other documents should be *prima facie* evidence of their own verity, and perhaps that certain proceedings which should have been taken before the report or other document was made were taken in fact, leaving the party who denies the truth of what is thus *prima facie* evidence, to make out his case affirmatively. Of the power to do this there is no question on the authorities.² But the legislature cannot pass conclusive rules of evidence; that is to say, it cannot make the showing by one party to a controversy conclusive of the truth of the facts shown, thus in effect denying to the other party a hearing. Its power over the rules of evidence is a power to shape and mould, for the purposes of justice, the rules under which parties are to make a showing of their rights, and not a power to preclude their showing them. "The most

¹ *Fales v. Wadsworth*, 23 Me. 553; *Gibbs v. Gale*, 7 Md. 76; *Cowen v. McCutcheon*, 43 Miss. 207; *Rich v. Flanders*, 39 N. H. 304; *Southwick v. Southwick*, 49 N. Y. 510. A statute making the tax-deed "*prima facie* evidence of the regularity of all the proceedings from the valuation of the land by the assessors up to the execution of the deed," shows no intent to make a void or voidable tax-deed a valid conveyance of title. It is not a curative statute, and does not preclude showing that the tax proceedings are either irregular or wholly void: *Lee v. Crawford* (N. D.), 88 N. W. Rep. 97.

² See ch. XV. A city charter may make a tax-bill *prima facie* evidence of the liability of the person named therein: *Louisville v. Johnson*, 95 Ky. 254. Tax-bills in the usual form

are presumptive evidence of the assessment and of the claim for the taxes: *Mullan v. His Creditors*, 39 La. An. 397. An assessment, even though invalid, may be made *prima facie* evidence of the amount justly due: *Olmsted Co. v. Barber*, 31 Minn. 256. A statute making the collector's certificate *prima facie* evidence of the facts recited does not violate the constitutional right to jury trial: *State v. Van Every*, 75 Mo. 530. A statute making the tax-roll in special assessment proceedings for an improvement *prima facie* evidence, when indorsed by the comptroller, of the regularity of all proceedings preliminary thereto, and of the validity of the tax and tax-roll, does not aid jurisdictional defects: *Adams v. Bay City*, 78 Mich. 211.

formal conveyance may be a fraud or a forgery; public officers may connive with rogues to rob the citizen of his property; witnesses may testify or officers certify falsely, and records may be collusively manufactured for dishonest purposes; and that legislation which would preclude the fraud or wrong being shown, and deprive the party wronged of all remedy, has no justification in the principles of natural justice or of constitutional law. A statute, therefore, which should make a tax-deed conclusive evidence of a complete title, and preclude the owner of the original title from showing its invalidity, would be void, because not a law regulating evidence, but an unconstitutional confiscation of property."¹ The case supposed is but an illustration of the general rule, which applies as well to all the necessary and jurisdictional steps leading up to the deed.² The law of the land requires that every party should

¹ *McCready v. Sexton*, 29 Iowa 356. And see, among many other cases to the same effect, *Marx v. Hanthorn*, 148 U. S. 172; *Kelly v. Ferrall*, 20 Fed. Rep. 364, 368; *Marx v. Hanthorn*, 30 Fed. Rep. 579; *Railroad Co. v. Galvin*, 85 Fed. Rep. 811; *Cairo, etc. R. Co. v. Parks*, 32 Ark. 131; *Little Rock, etc. R. Co. v. Payne*, 33 Ark. 816; *Wambole v. Foote*, 2 Dak. 1; *Dickerson v. Acosta*, 15 Fla. 614; *White v. Flynn*, 23 Ind. 46; *Corbin v. Hill*, 21 Iowa 70; *Powers v. Fuller*, 30 Iowa 476; *Taylor v. Miles*, 5 Kan. 498; *Baumgardner v. Fowler*, 82 Md. 631; *Groesbeck v. Seeley*, 13 Mich. 329; *Case v. Dean*, 16 Mich. 12; *Taylor v. Deveaux*, 100 Mich. 581; *McKinnon v. Meston*, 104 Mich. 642; *Dawson v. Peter*, 119 Mich. 274; *Abbott v. Lindenbower*, 42 Mo. 162, 46 Mo. 291; *Roth v. Gabbert*, 123 Mo. 29; *Wright v. Cradlebaugh*, 3 Nev. 341, 349; *Young v. Beardsley*, 11 Paige 93; *East Kingston v. Fowle*, 48 N. H. 57; *Sheets v. Paine* (N. D.), 86 N. W. Rep. 117; *Dever v. Cornwell* (N. D.), 86 N. W. Rep. 227; *Strode v. Washer*, 17 Or. 50; *Mather v. Darst*, 13 S. D. 75.

² The case of *Smith v. Cleveland*, 17 Wis. 556, contains some very general

and unqualified language on this subject. That a deed may be made conclusive that the mere sale was according to law has been held in Iowa: *McCready v. Sexton*, 29 Iowa 356; *Ware v. Little*, 35 Iowa 234; *Jeffrey v. Brokaw*, 35 Iowa 505; *Sibley v. Bullis*, 40 Iowa 429. Whether these decisions would be followed generally, may be a question; but where the sale does not conclude the taxpayer, and leaves him a right of payment, there is room to urge that it is a mere formal proceeding. A tax-deed cannot be made evidence of title when the land does not lie within the taxing district: *Smith v. Sherry*, 54 Wis. 114. The legislature may make the tax-deed conclusive evidence of compliance with every requirement with which the legislature might, in the original exercise of its discretion, have dispensed: *Breaux v. Negrotto*, 43 La. An. 426. The legislature can make recitals in tax-deeds conclusive evidence of due performance of tax proceedings within legislative control, but not of jurisdictional matters: *Roberts v. First Nat. Bank*, 8 N. D. 504. A statute providing that a tax-deed shall

have an opportunity for a trial of such rights as he claims; and there can be no trial if only one party is suffered to produce his proofs.¹ We may say in general, therefore, that it is not in the power of the legislature to lay down conclusive rules of evidence by way of obviating defects in tax proceedings.

2. *Legislative mandates.* A mandate to officers commanding them to give effect to invalid proceedings would be ineffectual for reasons equally conclusive. If such an act proceeds without an inquiry into the facts, it is a naked attempt to transfer one man's property to another by mere legislation, and this is not an authority which belongs to any legitimate government.² If it assumes to proceed upon evidence, then it

be conclusive evidence that all prior proceedings were regular does not cure the defect in the title of lands sold for taxes arising from the delivery by the county board of supervisors of an incomplete tax-roll to the town supervisors: *Ne-Ha-Sa-Ne-Park Assoc. v. Lloyd*, 7 App. Div. (N. Y.) 359. A statute providing that the bonds issued for a city assessment shall be conclusive evidence of the regularity of the proceedings and of the validity of the assessment lien will be enforced as to proceedings not jurisdictional in their nature, and after the city has acquired jurisdiction to make the assessment: *Ramish v. Hartwell*, 126 Cal. 443. Under a provision that, before issuing a warrant for the collection of a local assessment, the assessment shall be examined and certified as correct by certain officers, and that their certificate shall be conclusive evidence of the regularity of the proceedings, such certificate can cover only the formal proceedings; it does not determine the fact that the assessment is made against the proper persons: *Newell v. Wheeler*, 48 N. Y. 486. A statute providing that in an action to avoid a tax a reassessment ordered pending the action shall be conclusive evidence of

the amount of tax chargeable to the plaintiff, is invalid, as the legislature has no more power to make such reassessment conclusive evidence of the amount of tax chargeable than to make the original assessment conclusive evidence of such fact: *Plumer v. Supervisors*, 46 Wis. 163. A statute conferring power on the court ordering a sale of lands for taxes to cure all defects in the assessment and levy, and making the judgment conclusive evidence of the regularity of the proceedings, is invalid so far as it relates to jurisdictional defects: *Northern Pac. R. Co. v. Galvin*, 85 Fed. Rep. 811. A statute providing that the orders of the court in the proceedings for the confirmation of special assessments "shall be conclusive evidence of the regularity of all previous proceedings necessary to the validity thereof," applies only to collateral attacks, and not to a review on error of the judgment of confirmation: *Derby v. West Chicago Park Com'rs*, 154 Ill. 213.

¹ Cooley, Const. Lim. (5th ed.) 454. In this connection it is hardly necessary to say that no reference is had to cases under statutes of limitation, nor to cases resting on principles of equitable estoppel.

² *Bowman v. Middleton*, 1 Bay 252;

is usurpation of judicial authority, and for that reason void.¹ The legislature must prescribe rules, but when questions arise between parties whether rules have been complied with, the judiciary is the appointed arbiter.

3. *Special curative acts.*² That acts to cure defects in tax proceeding previously had may be passed under some circumstances has been affirmed in a great number of cases, some of which are referred to in the margin.³ The power may, there-

Wilkinson v. Leland, 2 Pet. 627, 657; Terrett v. Taylor, 9 Cranch 43; Ervine's Appeal, 16 Pa. St. 256, 266; Lambertson v. Hogan, 2 Pa. St. 22, 24.

¹ An act requiring the board of supervisors of a county to proceed to the apportionment and assessment of drain taxes, some portion of which had already been adjudged void, and the others palpably were so, was adjudged void on this ground in *Butler v. Saginaw Supervisors*, 26 Mich. 22. The cases of *Lewis v. Webb*, 3 Me. 326; *Lane v. Gorman*, 3 Scam. 238, 242; *Campbell v. Union Bank*, 6 How. (Miss.) 625, 661; *Ervine's Appeal*, 16 Pa. St. 256, 266; *Cash, Appellant*, 6 Mich. 193; *McDaniel v. Correll*, 19 Ill. 226; *Denny v. Mattoon*, 2 Allen 361; *Budd v. State*, 3 Humph. 483; *Wally's Heirs v. Kennedy*, 2 Yerg. 554, and *Piquet, Appellant*, 5 Pick. 64, are referred to as illustrating under different circumstances the distinction between legislative and judicial authority. See, also, *Lambertson v. Hogan*, 2 Pa. St. 22; *Greenough v. Greenough*, 11 Pa. St. 489, 494; *Haley v. Philadelphia*, 68 Pa. St. 45; s. c., 8 Am. Rep. 153, 155; *Calhoun v. McLenden*, 42 Ga. 405; *Trustees v. Bailey*, 10 Fla. 238; *People v. Frisbie*, 26 Cal. 135; *Sydnor v. Palmer*, 32 Wis. 406, 409; *Plumer v. Supervisors*, 46 Wis. 163; *Wall v. Wall*, 124 Mass. 65; *Forster v. Forster*, 129 Mass. 559.

² "A curative act," in the ordinary sense of that term, is a retrospective law, acting on past cases and existing

rights. The power of the legislature to enact such laws is therefore confined within comparatively narrow limits; and they are usually passed to validate irregularities in legal proceedings, or to give effect to contracts between parties which might otherwise fall for failure to comply with technical legal requirements: "*Meigs v. Roberts*, 162 N. Y. 371. A city charter authorizing suit to collect assessments illegally levied was held to be a validating act though it did not use the words "ratify," "confirm," or "validate: "*Nottage v. Portland*, 35 Or. 539. And such act is effective as a defense in an action to recover illegal assessments paid: *Ibid*. The effect of a curative act held not to be to take private property without just compensation, any more than in all other cases of taxation for public purposes: *Richman v. Muscatine Supervisors*, 77 Iowa 513. It has been held in South Carolina that an act authorizing taxation to pay bonds previously issued in violation of the constitution is not a validating act, which would be beyond the power of the legislature, but an exercise of the power to tax, and, therefore, constitutional: *Coleman v. Broad River T'p*, 50 S. C. 321.

³ *Kearney v. Taylor*, 15 How. 494; *Mattingly v. District of Columbia*, 97 U. S. 687; *Williams v. Albany County*, 122 U. S. 154; *People v. Seymour*, 16 Cal. 332; *People v. Todd*, 23 Cal. 181; *Jacksonville v. Basnett*, 20

fore, be taken as satisfactorily established, and the questions to be considered relate to the limitations upon it. First, however, may be mentioned some cautions that should attend the exercise of the power, but which rest in policy only, and therefore address themselves to the legislative judgment and sense of right, but do not constitute limitations upon legislative power. One of these concerns the retroactive character of such legislation; there being a special liability to abuse in retrospective legislation. The people in some states have felt this so strongly, that, by their constitutions, retrospective laws have been expressly forbidden;¹ but in the absence of any such

Fla. 525; *Smith v. Longe*, 20 Fla. 697; *Bloxham v. Railroad Co.*, 35 Fla. 625; *Parker v. Jacksonville*, 37 Fla. 342; *Tucker v. Justices*, 34 Ga. 370; *Cowgill v. Long*, 15 Ill. 202; *Mitchell v. Deeds*, 49 Ill. 416; *Davis v. State Bank*, 7 Ind. 316; *Lucas v. Tucker*, 17 Ind. 41; *Musselman v. Logansport*, 29 Ind. 533; *Boardman v. Beckwith*, 18 Iowa 292; *Land Co. v. Soper*, 39 Iowa 112; *Chicago. R. I. & P. R. Co. v. Independent Dist.*, 99 Iowa 556; *Boyce v. Sinclair*, 3 Bush 261; *Allen v. Archer*, 49 Me. 346; *Walter v. Bacon*, 8 Mass. 468, 472; *Patterson v. Phillbrook*, 9 Mass. 151, 153; *Locke v. Dane*, 9 Mass. 360; *Brevoort v. Detroit*, 24 Mich. 322; *Pillsbury v. Auditor-General*, 26 Mich. 245; *State v. Union*, 33 N. J. L. 350; *State v. Newark*, 34 N. J. L. 236; *In re Elizabeth Com'rs*, 49 N. J. L. 488; *Ensign v. Barse*, 107 N. Y. 329; *Terrel v. Wheeler*, 123 N. Y. 76; *Trustees v. McCaughey*, 2 Ohio St. 152; *Butler v. Toledo*, 5 Ohio St. 225; *Strauch v. Shoemaker*, 1 W. & S. 166; *McCoy v. Michew*, 7 W. & S. 386; *Williston v. Colkett*, 9 Pa. St. 38; *Montgomery v. Meredith*, 17 Pa. St. 42; *Dunden v. Snodgrass*, 18 Pa. St. 151; *Schenley v. Commonwealth*, 36 Pa. St. 29; *Bellows v. Weeks*, 41 Vt. 590.

¹Provisions of this nature are found in the constitutions of Colorado, Georgia, Louisiana, Missouri,

New Hampshire, New Jersey, Ohio, Tennessee, Texas, and, doubtless, of other states. In North Carolina retrospective taxation of sales, purchases, and other acts done, is forbidden. Legislation for the enforcement of back taxes is not forbidden by such a constitutional provision, where no new obligation is imposed: *Sturges v. Carter*, 114 U.S. 511; *New Orleans v. Railroad Co.*, 35 La. An. 679; *State v. Heman*, 70 Mo. 441; *Gager v. Prout*, 48 Ohio St. 89. See *Wellshear v. Kelly*, 69 Mo. 343. Where an ordinance for a street improvement was defective, an ordinance amending it after the completion of work so as to make it conform to law was held not to violate a constitutional provision against retrospective laws: *Bacon v. Savannah*, 105 Ga. 64. A statute enabling a city to assess lots adjoining a sewer for the expense of constructing it after prior assessments had been declared invalid because of the city's failure to observe the preliminary steps authorizing the construction of the sewer required by law, is repugnant to a constitutional provision prohibiting the enactment of retrospective laws: *Evans v. Denver*, 26 Colo. 193. Where a tax is invalid simply because the legislature did not provide for notice of the proceedings by which the amount of

express restriction, there is nothing in the fact that curative statutes operate retrospectively which can preclude their passage.¹ Then it is an obvious objection to such laws that they

the tax was to be ascertained, a retroactive amendment may cure such defect: *Ferry v. Campbell*, 110 Iowa 290.

¹ *Chicago, R. I. & P. R. Co. v. Independent Dist.*, 99 Iowa 556, and cases cited; *Galusha v. Wendt* (Iowa), 87 N. W. Rep. 512; *People v. Ingham Supervisors*, 20 Mich. 95; *State v. Newark*, 27 N. J. L. 185. A statute which, being but a mode of continuing or reviving a tax that might be supposed to have expired, is in this sense retrospective, but which does not give a judicial construction to a former statute, is not unconstitutional: *Stockdale v. Insurance Co.*, 20 Wall. 323; *Railroad Co. v. Rose*, 95 U. S. 78. It is not an objection to a curative statute that it is passed while suits are pending in respect of the defects or irregularities sought to be cured; the court must apply the statute in the pending suits. See *Cowgill v. Long*, 15 Ill. 202; *State v. Squires*, 26 Iowa 340; *Dittoe v. Davenport*, 74 Iowa 66; *Tuttle v. Polk*, 84 Iowa 12; *Clinton v. Walliker*, 98 Iowa 655; *State v. Norwood*, 12 Md. 195; *Miller v. Graham*, 17 Ohio St. 1; *Hepburn v. Curts*, 7 Watts 300; *Grim v. School Dist.*, 51 Pa. St. 219. Defects in the election of tax officers may be cured retrospectively, even though a suit is pending to take advantage of them: *Millikin v. Bloomington*, 49 Ind. 62. And the legislature may cure irregularities in an assessment although a *certiorari* has been sued out in respect of them: *People v. McDonald*, 69 N. Y. 362. *Certiorari* dismissed where a defect in the assessment was cured by special act after it was sued out: *State v. Apgar*, 31 N. J. L. 358. And see *Bristol v. Ingham Supervisors*, 20

Mich. 95; *Newark v. State*, 32 N. J. L. 453; *Ex parte McCardle*, 7 Wall. 506; *United States v. Tynen*, 11 Wall. 88. But such a statute cannot affect cases already passed into judgment: *People v. Saginaw Supervisors*, 26 Mich. 22; *Lambertson v. Hogan*, 2 Pa. St. 22. The legislature has no authority to reverse judgments directly or indirectly, and a legislative act legalizing a tax-roll and healing defects therein will be so construed as not to affect an existing judgment for trespass against the collector for seizing and selling property to satisfy the illegal tax: *Moser v. White*, 29 Mich. 59. Where, after property levied on under an irregularly made assessment had been sold, and after the owner had brought suit to recover of the township the proceeds of such sale, a curative act was passed legalizing the assessment roll and the acts of officers thereunder, it was held that the rights of parties had become vested before such act was passed, and were not affected thereby: *Daniells v. Watertown T'p*, 61 Mich. 514. A statute attempting to validate an illegal levy can operate only upon uncollected taxes based on said levy, and cannot validate any tax-sale or deed made or issued prior to its passage: *Dever v. Cornwell* (N. D.), 86 N. W. Rep. 227. A right given by statute to recover for taxes paid may be taken away, even though suits are pending: *St. Joseph County Com'rs v. Ruckman*, 57 Ind. 96. In New Jersey it is held that where a town has made an unauthorized levy the people cannot at a subsequent meeting validate the levy — their powers being altogether statutory: *Banta v. Richards*, 43 N. J. L. 497. Under a certain statute

may be invidious and inspired by favoritism, since they select for confirmation certain proceedings — those of a single district, for instance — leaving all others untouched. But the defects may be in a single district only, or the circumstances such that the need of legislation is exclusively confined to it. Moreover, in different districts different regulations may have been politic originally; and if so, there can be no very conclusive reason why they may not in effect be made by a retrospective sanction of the regulations actually applied. Cities always have regulations in respect to taxation differing in some particulars from those which prevail in towns; and, as in the case of police regulations, such rules must be allowed to vary, because in some cases there may be the most conclusive reasons why they should. But we should think the very limit of such legislation would be reached, when a particular assessment and the proceedings under it, in their operation throughout the district, were confirmed. To discriminate in such proceedings, and say they shall be valid as to a particular purchaser, or against a particular person or estate taxed, would not be legislation, because it would establish no rule. Its purpose would be, while leaving in force the rule which defeats the assessment, to exempt from its operation the case of a favored party. No department of the government possesses this authority. And all special confirmations of assessments and other proceedings are forbidden in some states, either by an express constitutional provision to that effect, or by the requirement that laws on the subject shall be general.¹

it was held that a city council could not dispense with or correct proceedings upon which depended its jurisdiction to make a street assessment: *California Imp. Co. v. Moran*, 128 Cal. 373.

¹ The power of the legislature to pass curative acts to legalize defective proceedings under previous statutes is dependent on its continued or present power to authorize proceedings like those sought to be so legalized. A special act to cure defects in certain tax proceedings cannot be passed where under the constitution the legislature has no power to

pass local or special laws for the assessment and collection of taxes; *Kimball v. Rosendale*, 42 Wis. 407. In Iowa it is held that a special act authorizing a levy of taxes for school purposes made by the directors of a particular district after the time fixed by statute does not violate a constitutional provision prohibiting the enactment of local or special laws, even though a general law could have been made applicable and operative throughout the state: *Chicago, R. I. & P. R. Co. v. Independent Dist.*, 99 Iowa 556.

One very precise limit to the power to cure these proceedings is this: they cannot be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every species of legal proceedings. Curative laws may heal irregularities in action, but they cannot cure a want of authority to act at all.¹ And in this regard the rules which apply to retrospective and to prospective healing acts are the same.

What is to be deemed a want of jurisdiction may in some cases be a question of no little nicety, especially in the case of local taxation. The local authorities take their powers from the state, and their acts are void when unauthorized by previous law. But if a town without authority were to contract a debt for a special purpose, the debt might undoubtedly be validated by retrospective legislation.² But in such cases there is commonly a general power to incur town liabilities, and the particular debt is not void for want of power to act upon the subject, but because the power conferred is so restricted as not to embrace it. There is room for saying, therefore, that the

¹ *People v. Goldtree*, 44 Cal. 323; *People v. Lynch*, 51 Cal. 15; *Brady v. King*, 53 Cal. 44; *Harper v. Rowe*, 53 Cal. 233; *People v. McCune*, 57 Cal. 153; *Kelly v. Luning*, 76 Cal. 309; *California Imp. Co. v. Moran*, 128 Cal. 373; *Daniel v. McCorrell*, 19 Ill. 226; *Blake v. People*, 109 Ill. 504; *Atchison, etc. R. Co. v. Maquilkinn*, 12 Kan. 301; *Bellevue v. Peacock*, 89 Ky. 495; *State v. Doherty*, 60 Me. 504; *Denny v. Mattoon*, 2 Allen 361; *Wall v. Wall*, 124 Mass. 65; *Forster v. Forster*, 129 Miss. 559; *Vaughan v. Swayzie*, 56 Miss. 704; *Abbott v. Lindenbower*, 42 Mo. 162; *Canda Manuf. Co. v. Woodbury*, 58 N. J. L. 134; *Hearn's Petition*, 96 N. Y. 378; *Dever v. Cornwell* (N. D.), 86 N. W. Rep. 227; *Stephan v. Daniels*, 27 Ohio St. 527; *Richards v. Rote*, 68 Pa. St. 248; *Nelson v. Rountree*, 23 Wis. 367. The legislature of a state cannot validate a tax which is prohibited by the federal laws: *Exchange Bank Tax Cases*, 21 Fed. Rep. 99. So a state statute which attempts to legalize taxes lev-

ied on the entire stock of a national bank *in solido* against the bank is void: *National Bank v. Richmond*, 42 Fed. Rep. 877. The board of trustees of a civil town having no authority to levy a tax for a special school fund, such unauthorized levy cannot be legalized by ratification by the board of trustees of the school town: *Shepardson v. Gillett*, 133 Ind. 125. Certain special curative acts held not to have cured the defect that the expenditures for which assessments were levied were made under an illegal contract: *Poth v. New York*, 151 N. Y. 16, citing *In re New York Inst.*, 121 N. Y. 234; *In re Livingston*, 121 N. Y. 94.

² See *Booth v. Woodbury*, 52 Conn. 118; *Taylor v. Thompson*, 42 Ill. 9; *Board of Com'rs v. Bearss*, 25 Ind. 110; *Jefferson School T'p v. Yitton*, 116 Ind. 467; *Schenck v. Jeffersonville*, 152 Ind. 204; *Lowell v. Oliver*, 8 Allen 247; *Comer v. Folsom*, 13 Minn. 219; *Crowell v. Hopkinson*, 45 N. H. 9.

case is rather one of irregularity than of want of jurisdiction. What is more important is, that in such a case there is no adversary or respondent party; the town is acting for itself exclusively, and against no one. Where, however, the town proceeds to levy a tax without authority, the case is different; it is then proceeding *in invitum* against individuals who would be entitled, if the proceedings were legal, to have notice and be heard in various stages. If the proceedings are unauthorized by law, no one is legally or morally bound to take notice of them, or can have a legal hearing in respect to them, and a retrospective affirmance would, in effect, establish valid claims without opportunity to be heard. It is not believed this is competent.¹

If the local authorities were to assume in any case to levy a tax for a purpose for which taxation is not permissible, there would be an evident want of power to confirm it, because the legislature could not have authorized it originally. The unauthorized acts of individuals cannot confer upon the state a power it did not before possess.² But the want of power to confirm is the same in all cases where an element in legal taxation is wanting; and therefore taxation without an assessment must be incapable of confirmation, because apportionment is indispensable.³ So if the party has been illegally deprived of

¹ See *Shawnee Com'rs v. Carter*, 2 Kan. 115; *Tunbridge v. Smith*, 48 Vt. 648; *Richmond, etc. R. Co. v. Commissioners*, 84 N. C. 504. In *Grim v. School District*, 57 Pa. St. 433, *Sharswood, J.*, speaking of a bounty tax, says: "It has not been pretended, and could not be, that the legislature had not the power antecedent to authorize it. If so, they could cure any irregularity or want of authority in levying it by a retroactive law, even though thereby a right of action, which had been vested in an individual, should be divested. It is within the principle of all the decisions of admitted authority." But the bounty tax in this case was not the sole tax levied: it was additional to other levies, and the taxpayer had all legal opportu-

nities to be heard. The same may be said of *Tucker v. Justices*, 34 Ga. 370. See *Boardman v. Beckwith*, 18 Iowa 292, for a more doubtful case.

² *National Bank v. Iola*, 9 Kan. 689, 696, per *Dillon, J.*; *Conway v. Cable*, 37 Ill. 82; *Hart v. Henderson*, 17 Mich. 218; *Dean v. Borchsenius*, 30 Wis. 235.

³ The Pennsylvania statute of 1815 declared that "no inequality in the assessment, or in the process or otherwise, shall be construed or taken to affect the title of the purchaser, but the same shall be declared to be good and legal." Also that only "when the owner or owners of lands sold for taxes shall have paid the taxes due on them previous to the sale, or within two years thereafter shall have tendered the amount of the

the opportunity to be heard in opposition to the assessment, the defect is jurisdictional.¹

A tax discriminating against an individual could not be af-

taxes and costs with twenty-five per centum additional, and the tender has been refused, shall he or they be entitled to recover the lands by due course of law, and that in no other case and no other plea shall an action be sustained." Notwithstanding this act it was decided that if an unseated lot was put on the seated list, and then transferred to the unseated without notice to the owner, a sale on this assessment would be void: *Milliken v. Benedict*, 8 Pa. St. 169, reviewing and approving *Larimer v. McCall*, 4 W. & S. 133; and *Harper v. Mechanics' Bank*, 7 W. & S. 204. In *Commercial Bank v. Woodside*, 14 Pa. St. 404, 409, *Bell, J.*, says: "It is essential to the validity of every tax sale of lands that the subject of it should be assessed and returned, by some competent authority, as unseated, or, where it has been rated as a *seated* tract or lot, that it be transferred to the unseated list, by the commissioners of the county, or their authorized agents, with notice to the owner, if that be possible. This is the doctrine of all the cases in which the subject has been treated. They settle indisputably, that an omission, in this particular, is uncured by the act of 1815, which applies only to irregularities in the proceeding. It is the assessment, says *Larimer v. McCall*, 4 W. 351, 4 W. & S. 133, which confers the power to sell in the same manner as a judgment on which an execution is issued. Without this, there is no authority to divest the title of the owner, and if a tract be returned as seated it cannot be sold for taxes. To the same effect are the other adjudications, down to *Milliken v. Benedict*, 8 Pa. St. 169." To the

same effect is *Stewart v. Trevor*, 56 Pa. St. 374. That the want of an assessment is not an irregularity capable of being thus cured, see *Steward v. Shoenfelt*, 13 S. & R. 360; *Bratton v. Mitchell*, 1 W. & S. 310; *Miller v. Hale*, 26 Pa. St. 432; *McReynolds v. Longenberger*, 57 Pa. St. 13; *Vancouver v. Wintler*, 8 Wash. 378. That the want of a notice required by the constitution is an incurable defect, see *Wilson v. McKenna*, 52 Ill. 43. That a validating act is unconstitutional in so far as it attempts to dispense with statutory notice to the taxpayer, see *Evans v. Fall River County*, 9 S. D. 130. An assessment so defective as to be totally void cannot be cured by legislation: *People v. Holliday*, 25 Cal. 300; *People v. Lynch*, 51 Cal. 15; *Great Falls Ice Co. v. District of Columbia*, 19 D. C. 327; *Slaughter v. Louisville*, 89 Ky. 112; *Cromwell v. Wilson*, 52 Hun 614. So with a want of valuation: *People v. Savings Union*, 31 Cal. 132. The confirmation by a city council of a void assessment cannot make it good: *Doughty v. Hope*, 3 Denio 594. See *Hodgdon v. Burleigh*, 4 Fed. Rep. 111. Taxes invalid because levied for a street improvement made under a resolution by the city council and not under an ordinance passed by the mayor and council cannot be validated by a subsequent ordinance; *Newman v. Emporia*, 32 Kan. 456. Where a levy is made under an act which is void under the constitution because it fails to state the object of the tax, an act to legalize the levy is also void: *Atchison, etc. R. Co. v. Woodcock*, 18 Kan. 20. See, for a similar principle, *Harper v. Rowe*, 53 Cal. 233.

¹ *Marsh v. Chestnut*, 14 Ill. 223;

firmed; but a merely excessive levy for lawful purposes, apportioned through the district, might be, for this would only be an enlargement of the original authority, and taxpayers have had their opportunity to be heard on all questions of equality and apportionment.¹ But a tax sale that was made after a tax had been paid would be void and incapable of confirmation, the officer losing all jurisdiction to proceed when payment has been made.²

The general rule has often been declared, that the legislature may validate retrospectively the proceedings which they might have authorized in advance.³ Therefore, if any direc-

Billings v. Detten, 15 Ill. 218; *Matter of Trustees of Union Coll.*, 129 N. Y. 308. In the last-named case it is said by *Finch, J.*, that "to ratify in form an unconstitutional act, and then by retrospective legislation cut off all power of resistance, is a measure neither tolerable nor possible." And see *Richmond, etc. R. Co. v. Commissioners*, 84 N. C. 504; *Tunbridge v. Smith*, 48 Vt. 648; *Albany City Bank v. Maher*, 20 Blatch. 341. If one man's land is taxed to another and sold, the sale is void and cannot be made otherwise by legislation: *Abbott v. Lindenbower*, 42 Mo. 162. And see *Hume v. Waincott*, 46 Mo. 145. If land which is not within a city is taxed by it, the tax cannot be validated though afterwards the land is annexed: *Atchison, etc. R. Co. v. Maquillin*, 12 Kan. 301.

¹ See *Iowa R. Land Co. v. Soper*, 39 Iowa 112.

² *Reading v. Finney*, 73 Pa. St. 467. Penalties cannot be imposed in respect of the non-payment of taxes which the legislature assumes are irregular, and of which it authorizes the correction: *Trowbridge v. Horan*, 78 N. Y. 439.

³ See *Mattingly v. District of Columbia*, 97 U. S. 687; *Exchange Bank Tax Cases*, 21 Fed. Rep. 99; *State v. Squires*, 26 Iowa 340; *Tuttle v. Polk*, 84 Iowa 12; *Richman v. Muscatine*

Supervisors, 77 Iowa 513; *Clinton v. Walliker*, 98 Iowa 655; *Marion County v. Louisville & N. R. Co.*, 91 Ky. 388; *Breaux v. Negrotto*, 43 La. An. 426; *Vaughan v. Swayzie*, 56 Miss. 705; *Smith v. Buffalo*, 159 N. Y. 427; *Hartzung v. Syracuse*, 92 Hun 203. The legislature can validate a defective levy which it might have authorized to be made in the manner in which it was laid; so held where the state board of supervisors levied, without authority, a state tax which the legislature might have levied or ordered the board to levy: *Shuttock v. Smith*, 6 N. D. 56. Where a county has authority to levy a head-tax for county purposes, and levies an *ad valorem* tax instead, the legislature may by subsequent enactments validate the levy: *Marion County v. Louisville & N. R. Co.*, 91 Ky. 388. Where a township tax was void as exceeding the statutory town-tax limit, the legislature has power to pass an act validating the assessment so erroneously levied, and such an act is constitutional: *Kettelle v. Warwick & C. Water Co. (R. I.)*, 49 Atl. Rep. 492. Where a county court was authorized to levy an *ad valorem* tax every five years, a levy for the sixth year was a mere irregularity and could be validated by statute: *Louisville & N. R. Co. v. Bullitt County*, 92 Ky. 280. Although

tions of the statute fail of observance, which are not so far of the essence of the thing to be done that they must be provided for in any statute on the subject, the legislature may retrospectively cure the defect. But there are probably some ex-

a statute levying a tax on the lands in a levee district for the payment of the levee bonds provided that all lands on which the tax was not paid before a certain day in the year should on that day be sold for the tax, if such lands were sold after the day the irregularity could be cured by legislative act: *Ford v. Delta & P. L. Co.*, 43 Fed. Rep. 181. See *Paxton v. Land Co.*, 67 Miss. 96. As the state has the right to sell its title which it has acquired at a sale for delinquent taxes, it may by statute adopt or validate an illegal sale of such title: *Hoffman v. Pack*, 123 Mich. 74. It is competent for the legislature to provide for the completion of a partly finished drain, and to point out a way for the correction of errors, so as to make it practicable to complete it, although the cost is thereby increased: *Ankettell v. Hayward*, 119 Mich. 525. A statute legalizing the incorporation of cities incorporated under prior void statutes, and requiring new assessments for local improvements where former assessments have been held void, is valid: *State v. Ballard*, 16 Wash. 418. The legislature may sanction an improvement which it might have authorized, and may order an assessment for its cost: *Matter of Sackett, etc. Streets*, 74 N. Y. 95. The legislature may authorize the recovery by a city of improvements made under a void act, having a right to legalize what it might previously have ordered: *Matter of Amberson Av.*, 179 Pa. St. 634. A statute legalizing unexecuted grading contracts which were invalid because of defects in the notice of proposals for bids is a valid curative act: *Windsor v. Des Moines*, 101 Iowa 343. See *Ottumwa, etc. Co. v. Ainley*, 109 Iowa 386. So is a statute legalizing a city ordinance and resolutions thereunder assessing and levying the taxes or special assessments for the paving of streets: *Clinton v. Walliker*, 98 Iowa 655. The legislature may legalize an assessment irregular in the mode of procedure, when the municipality had jurisdiction of the subject-matter: *Tift v. Buffalo*, 82 N. Y. 204, citing *Schenley v. Commonwealth*, 36 Pa. St. 29. It is justly said in that case that a party has no vested right to a defense based on mere informalities. The want of a certificate to an assessment roll may be cured retrospectively: *Sinclair v. Learned*, 51 Mich. 335. See *Clementi v. Jackson*, 92 N. Y. 591. Other omissions and irregularities held non-jurisdictional and curable: *Williams v. Albany County*, 122 U. S. 154; *Ensign v. Barse*, 107 N. Y. 329; *Kent v. Warner*, 47 Hun 474; *Matter of East Av. Baptist Church*, 57 Hun 590; *Smith v. Hard*, 61 Vt. 469. Even the failure to give opportunity to be heard has been held curable: *Exchange Bank Tax Cases*, 21 Fed. Rep. 99. The cases of *Milliken v. Benedict*, 8 Pa. St. 169, and *Commercial Bank v. Woodside*, 14 Pa. St. 404, turn upon a failure to give a notice which, in advance, might have been dispensed with. See, also, *Prindle v. Campbell*, 9 Minn. 212; *Dubuque v. Wooton*, 28 Iowa 571. But see *People v. Seymour*, 16 Cal. 332. As to what will be held a legislative ratification of an irregular assessment, see *Mattingly v. District of Columbia*, 97 U. S. 687.

ceptions to this general rule. If the law has afforded the party an opportunity to be heard, when it might have been dispensed with, he has a right to rely upon this for his protection, and we should doubt the right of the legislature to take it away by retroactive law. There are some cases which, we think, recognize this right to a hearing which the law has given, as constituting an exception to the general right of the legislature to cure defects. And the reason of the exception will apply to all cases in which notice to the party, by publication or otherwise, has been provided for his protection. If this can be dispensed with by a healing act, the very provision for a notice for the party's protection becomes a trap for his destruction.¹

¹ In *Miller v. Hale*, 26 Pa. St. 432, in which it was decided that a sale of unseated lands, made before the expiration of a year from the time when the tax was due and unpaid, could not be validated by the statute curing irregularities, the following remarks are made by *Woodward, J.*: "If it be granted that this was a regular assessment, or that its irregularities were such as the curative provisions of the act of 1815 would remedy, it cannot be claimed that the taxes were 'due and unpaid for the space of one year before' the sale—a condition on which the jurisdiction of the treasurer is expressly limited by the first section of the act of 1815. It was said with great truth, by Judge *Huston*, in *McCall v. Larimer*, 4 Watts 351, 352, that taxes cannot be due unless they have been assessed. It is, indeed, the assessment that makes the tax. It is the duty of all owners of unseated lands to return them for taxation, and to pay the taxes when assessed; but how is he to pay before they are assessed? It is not for him to fix the valuation or the rate, but for the county commissioners; and, until they have performed their duty, he has no duty to perform. But, when the assessment has been made and the tax ascertained, there is no au-

thority for proceeding to sell the land until the tax shall have remained unpaid a year. A sale short of that period is simply void. It is like a sale where there has been no assessment, which has often been declared insufficient to pass the title. Nor does the curative provision of the fourth section of the act of 1815 apply to such a sale, for that was intended to remedy irregularities in proceedings where jurisdiction had attached, not to confer jurisdiction in cases that were beyond the purview of the act. A system was provided by the legislature for enforcing the payment of taxes upon unseated lands, but until a tract has been assessed and the tax remained due and unpaid a year, it is not within the system nor subject to any of its provisions. If such were not the rule of decision, titles could be divested, without notice to the owner, whenever it suited the interest or caprice of the county officers to expose them to sale. A law intending to promote public objects without a wanton sacrifice of private rights would thus become an instrument of intolerable mischief, and the doubts of its constitutionality, which, with all its checks and balances, attended its enactment and early history, would grow into a conviction

4. *General curative laws.* On the subject of general curative acts to operate retrospectively, little need be added here, as what has already been said in respect to special acts is entirely applicable.¹ Indeed the general acts are commonly less objection-

that would sweep it from the statute book." See as somewhat analogous, *Wall v. Wall*, 124 Mass. 65; *Forster v. Forster*, 129 Mass. 559. A sale under a void tax (as for war taxes in aid of the rebellion) cannot be validated by subsequent legislation. *Bookout v. Andrews* (Miss.), 25 South. Rep. 865. A curative act cannot validate a sale for taxes of land assessed and sold in the name of a person after his decease: *Edwards v. Fairex*, 47 La. An. 170. Nor can a statute validate a wholly void sale of the owner's real property or an interest therein, under a void assessment: *Cromwell v. MacLean*, 123 N. Y. 474. That a void sale cannot be confirmed, see, further, *Harper v. Rowe*, 53 Cal. 233; *Clementi v. Jackson*, 92 N. Y. 591. Where the enforcement of a lien depends upon an act validating it, the lien cannot be enforced in an action begun before the act took effect. See *Reis v. Graff*, 51 Cal. 86; *People v. McCain*, 51 Cal. 360. In California it is held that a statute providing for the ratification of certain orders of a municipal board concerning street work, and providing how assessments shall be made for work already done, does not authorize the board to order property assessed for work ordered and completed before the passage of the statute, when such property was not liable therefor under the law as it existed when the work was ordered, the legislature having no right to impose such liability: *Kelly v. Luning*, 76 Cal. 309.

¹ A statute providing for the relieving, by the comptroller, of an unpaid tax which shall be ascertained to be illegal or void by reason of any irregularity or defect in the omission

of statutory requirements, etc., is a curative statute, and cannot be made applicable where no assessment at all has been made, or where the assessment was absolutely null and void: *People v. Wemple*, 117 N. Y. 77. An act authorizing review of unjust assessments was held not to validate an assessment which was no assessment at all, because laid under an unconstitutional statute: *Hawkins v. Mangum*, 78 Miss. 97 (28 South. Rep. 872). A statute legalizing the taxes assessed for the year in a certain town was intended to cure defects of irregularity only, and not to make legal an unauthorized assessment of a joint and undivided tax upon lots of land owned by different persons: *Mowry v. Blandin*, 64 N. H. 3. A general act validating "all assessments heretofore laid in said city" will not validate one which was laid without any authority or jurisdiction: *People v. Brooklyn*, 71 N. Y. 495. A charter provision declaring an assessment which has been confirmed by the common council to be "final and conclusive" does not apply where the assessment is entirely void and without jurisdiction: *People v. Wilson*, 119 N. Y. 515. An assessment without any valuation, where by statute the power to lay is limited to one-half the value of the land, is laid without authority of law, and therefore is not cured by a statute providing that irregularities, etc., shall not defeat: *Matter of Second M. E. Church*, 66 N. Y. 395. A validating statute which confirms all assessments of benefits or damages by reason of the grading or improvement of any street cannot be construed as embracing assessments by a body having no authority to make assess-

able than the special, because they are enacted on general considerations, and are not partial or invidious.

5. *Prospective curative laws.* Laws which undertake to provide that in future proceedings errors or irregularities shall not be fatal, come also under the same restrictions upon legislative authority;¹ they cannot, for example, cure a total want of power to tax,² nor can they relieve against jurisdictional defects.³ But such laws would seem entitled to liberal

ments. It presupposes jurisdiction to make them, and only cures irregularities in exercising a power lawfully possessed: *Harris v. Ansonia*, 73 Conn. 358. Where a tax-sale was made outside of the hours named by the statute, it was validated by a subsequent act confirming all sales theretofore or thereafter made, although not made during the prescribed hours: *State v. Landis* T'p, 50 N. J. L. 374. Where an act legalizing defective oaths to assessment rolls provides that it "shall not affect any title to real estate," it means a hostile title, that is, a title acquired otherwise than from the state, and held in hostility to a title obtained from the state: *Kent v. Warner*, 47 Hun 474.

¹ See *ante*, pp. 514, 515.

² *Stephan v. Daniels*, 27 Ohio St. 527. A statute providing that in case of the county court's failure to levy a tax, or in case of an illegal or erroneous levy, such tax shall be levied in addition to the regular levy, does not apply where there was no authority for levying the tax: *State v. Wabash*, St. L. & P. R. Co., 97 Mo. 296.

³ *Auditor-General v. Duluth*, S. S. & A. R. Co., 116 Mich. 122. The Minnesota tax-law providing, among other things, that "all the instructions and directions herein given for the assessing of lands and personal property, and the levying and collecting of taxes and assessments, shall be deemed only directory, and no error or informality in the pro-

ceedings of any of the officers intrusted with the same, not affecting the substantial justice of the tax itself, shall vitiate, or in any wise affect, the validity of the tax or assessment, or of the title conveyed under the sale for taxes under this chapter," does not embrace such errors and informalities as go to the jurisdiction of the officers charged with the performance of the duties imposed by the chapter, or the validity of their acts, but only such as do not substantially affect the material steps in the proceedings; and the act does not cure a defective notice of sale: *Prindle v. Campbell*, 9 Minn. 212. An assessment in which the lands of two persons were assessed together under one aggregate assessment was held in *Hamilton v. Fond du Lac*, 25 Wis. 490, 495, not cured by a statute providing that an assessment should be valid "notwithstanding any omission, defect, or irregularity," *Paine, J.*, remarking, "it would be clearly going beyond the scope and intent of this act to say that it made valid an assessment against one person of a tax upon another person's lots. That is something more than a mere omission, defect, or irregularity in the proceedings." Where a tax is vitiated for the failure of the board of review to grant the taxpayer a hearing, the defect is jurisdictional, and does not come within the curative provisions: *Caledonia T'p v. Rose*, 94 Mich. 216.

consideration, since the parties concerned would be apprised in advance that they were not to rely upon an exact compliance with the law, and would be under greater obligation to watch the proceedings.¹ Of the very comprehensive curative provis-

Where the assessment is absolutely void for want of authority in the municipal authorities to make the improvement, a statute providing against the setting aside of assessments because of irregularity or defect in form, or illegality in the making and levying of the same, has no remedial or curative effect: *App v. Stockton*, 61 N. J. L. 520. The curative provisions of a statute do not apply to assessments where the contract for the improvement for which they were laid was illegal because made by the town with its trustee: *Benton v. Hamilton*, 110 Ind. 294. The Pennsylvania statute cannot be construed to validate an assessment made without notice: *Herschberger v. Pittsburgh*, 115 Pa. St. 78. The Washington statute permitting recovery of street assessments notwithstanding irregularities and defects in the assessment proceedings has no application to cases where there has been no assessment: *Vancouver v. Wintler*, 8 Wash. 378. Provisions of a city charter authorizing the court, in case an assessment on which suit is brought proves to be irregular or informal, to render judgment against the defendant or the premises for the amount, properly chargeable, of the expense incurred, does not authorize a suit for a share of the expense, or value of an improvement, the assessment for which has been set aside as illegal and void: *Manistee v. Harley*, 79 Mich. 238. Nor does a provision that "no assessment shall be held invalid except upon appeal to the city council," etc., apply to a case where the council is powerless to remedy the defect: *Manning v. Den*, 90 Cal. 610.

An assessment that does not contain a description sufficient to identify the property assessed is void, and therefore not within the curative statute: *Augusti v. Lawless*, 45 La. An. 1370. Under a statute declaring that an assessment for a local improvement should not be vacated for any defect, omission, or irregularity, the jurisdiction of the board of supervisors to order such an assessment depended upon a prior apportionment of the expense by the commissioner of public works, but that officer merely certified that the improvement had been completed and accepted, and that "the apportionment of the assessment may be made," and it was held that the assessment was not validated: *Hearn's Petition*, 96 N. Y. 378. The provision that no error in a tax-sale shall invalidate it does not cure the effect of the sheriff's failure to designate the property which he sells for a tax: *Nelson v. Abernathy*, 74 Miss. 164.

¹ An act which provides that no tax shall be set aside for any irregularity or defect in form, or illegality in assessing, laying, or levying such tax, if the person against whom, or the property upon which, such tax is levied, assessed, or laid is in fact liable to taxation, and giving the court power to amend and correct all irregularities and defects in the form or manner of assessment, should be liberally construed, and the provisions made to apply to taxes assessed before the act was passed. Such a law was applied to a railroad company which had succeeded to the rights of another where a tax had erroneously been assessed to the old instead of the new company:

ions applicable to tax proceedings in Illinois the supreme court of that state says: "These enactments were no doubt designed to dispense with the strictness of the common law in the summary proceedings for the levy and collection of taxes; to remove and wipe out all mere technical objections in the raising of the revenue, thus placing the taxpayer who honestly owes his tax to the government which affords him protection on precisely the same footing as any other person who owes an honest debt. Nor should the courts interpose objections to thwart the legislative will."¹ Under a curative statute in force in Indiana it is held that irregularities will not affect the validity of an assessment if the proceedings are substantially correct.² The cases under the Iowa statute go farther, perhaps, than any others in sanctioning broad powers in the legislature to cure defects.³ Under the Kansas act providing that "no irregularity in the assessment roll, nor omission from the same, nor mere irregularities of any kind in any of the proceedings, shall invalidate any such proceeding or the title conveyed by the tax-deed," it has been held the proceeding are not vitiated by the omission of the county clerk's seal from the jurat to the

State v. Montclair, etc. R., 43 N. J. L. 524.

¹ *Beers v. People*, 83 Ill. 488. Other cases involving the application of the Illinois statute are: *Buck v. People*, 78 Ill. 560; *Chiniquy v. People*, 78 Ill. 570; *Purrington v. People*, 79 Ill. 11; *Eurigh v. People*, 79 Ill. 214; *Thatcher v. People*, 79 Ill. 597; *Pacific Hotel Co. v. Lieb*, 83 Ill. 602; *Andrews v. People*, 84 Ill. 28; *Halsey v. People*, 84 Ill. 89; *Fisher v. People*, 84 Ill. 491; *Law v. People*, 87 Ill. 385; *Edwards v. People*, 88 Ill. 340; *Lyle v. Jacques*, 101 Ill. 644; *Gage v. Bailey*, 102 Ill. 11; *Ohio & M. R. Co. v. People*, 119 Ill. 207; *St. Louis Bridge Co. v. People*, 128 Ill. 422; *Gage v. Nichols*, 135 Ill. 128; *Wabash R. Co. v. People*, 138 Ill. 316; *Peoria, D. & E. R. Co. v. People*, 141 Ill. 483; *St. Louis, R. I. & C. R. Co. v. People*, 147 Ill. 9; *Cairo, V. & R. Co. v. Mathews*, 152 Ill. 153; *Spring Valley Coal Co. v. People*, 157

Ill. 543; *Chicago & N. W. R. Co. v. People*, 171 Ill. 249, 174 Ill. 80; *McChesney v. People*, 178 Ill. 542; *People v. Chicago, B. & Q. R. Co.*, 189 Ill. 397.

² *Reynolds v. Bowen*, 138 Ind. 434.

³ See *Eldridge v. Kuehl*, 27 Iowa 160; *McCready v. Sexton*, 29 Iowa 356; *Hurley v. Powell*, 31 Iowa 64; *Rima v. Cowan*, 31 Iowa 125; *Thomas v. Stickle*, 32 Iowa 71; *Bulkley v. Callanan*, 32 Iowa 461; *Henderson v. Oliver*, 32 Iowa 512; *Ware v. Little*, 35 Iowa 234; *Jeffrey v. Brokaw*, 35 Iowa 505; *Genther v. Fuller*, 36 Iowa 604; *Sibley v. Bullis*, 40 Iowa 429; *Railroad Co. v. Carroll County*, 41 Iowa 153; *Burlington v. Quick*, 47 Iowa 222; *Polk County v. Kauffman*, 104 Iowa 639; *Chicago, B. & Q. R. Co. v. Kelley*, 105 Iowa 106; *Chicago, R. I. & P. R. Co. v. Ottumwa*, 112 Iowa 300.

assessor's oath and other affidavits,¹ or by a delay in making up the tax-lists and accompanying deeds,² or by an error in the notice as to the amount required to redeem from tax-sale.³ In Kentucky irregularities in the appointment or proceedings of the board of supervisors will not prevent the recovery of taxes.⁴ Under the curative statute in Maine, if the assessors have jurisdiction to assess the particular tax against the particular person, the tax so assessed will be valid and collectible notwithstanding errors, mistakes, or omissions in procedure by the assessors, collector, or treasurer.⁵ The tax-law of Michigan contains very liberal curative provisions under which no irregularity or omission — not jurisdictional and not prejudicial to the rights of property-owners — in proceedings to levy, assess, or collect a tax, will render the tax void.⁶ In Minnesota, errors, irregularities, or omissions in assessment that do not go to the jurisdiction are not ground for collateral attack on a judgment for taxes.⁷ Under the curative statute of North

¹ Shoup v. Railroad Co., 24 Kan. 547.

² Stout v. Coates, 35 Kan. 382.

³ Watkins v. Inge, 24 Kan. 612.

⁴ Southern Warehouse, etc. Co. v. Mechanics' Trust Co. (Ky.), 56 S. W. Rep. 162, citing Fonda v. Louisville (Ky.), 49 S. W. Rep. 785.

⁵ Foss v. Whitehouse, 94 Me. 491. See Rockland v. Ulmer, 84 Me. 503; Charleston v. Lowrey, 89 Me. 582. But the healing provisions of the Maine statutes relating to errors and omissions are not applicable until a tax-list is first shown to be in existence under the hands of the assessors: Norridgewock v. Walker, 71 Me. 181; Topsham v. Purinton, 94 Me. 354.

⁶ See Petrie Lumber Co. v. Collins, 66 Mich. 64; Boyce v. Peterson, 84 Mich. 490; Boyce v. Stevens, 86 Mich. 549; Muskegon v. Martin Lumber Co., 86 Mich. 625; Auditor-General v. McArthur, 87 Mich. 457; Boyce v. Auditor-General, 90 Mich. 314; Jenkinson v. Auditor-General, 104 Mich. 269; Fletcher v. Post, 104 Mich. 424; Shimmons v. Saginaw, 104 Mich. 511; Blue Iron Mining Co. v. Negaunee,

105 Mich. 317; Auditor-General v. Keweenaw Assoc., 107 Mich. 405; Hamilton, etc. Co. v. L'Anse T'p, 107 Mich. 419; Auditor-General v. Longyear, 110 Mich. 223; Auditor-General v. Hutchinson, 113 Mich. 245; Ludington v. Escanaba, 115 Mich. 288; Auditor-General v. Duluth, S. S. & A. R. Co., 116 Mich. 122; Auditor-General v. Sparrow, 116 Mich. 574; Nester v. Church, 120 Mich. 81; McFadden v. Brady, 120 Mich. 699; Wilkin v. Keith, 121 Mich. 66; Gates v. Johnson, 121 Mich. 663; Hoffman v. Pack, 123 Mich. 74. There is also a statutory presumption in Michigan, until the contrary is proved, that any certificate, etc., required to be made and filed in any office was made and filed in the proper office: Redding v. Lamb, 81 Mich. 318; Benedict v. Auditor-General, 104 Mich. 269. Failure to record proof of publication of notice of hearing on assessment will be held immaterial where it is shown such publication was had: Shimmons v. Saginaw, 104 Mich. 511.

⁷ McNamara v. Fink, 71 Minn. 66.

Dakota, which declares, in effect, that no errors or omissions in assessing or levying any tax under the act "shall vitiate or in any way affect any such assessment, unless it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved," it is held that where a pretended assessment has been made without authority of any law the aggrieved taxpayer need not allege or prove injury, for injury is presumed.¹ By the curative statutes of Ohio, technical irregularities or defects in, and purely formal objections to, special assessments for improvements are to be disregarded.² And under the Pennsylvania statute many irregularities have been held to be cured.³

In many of the states there are statutes which provide that a mistake in the name of the owner of the land shall not invalidate a tax.⁴ Other illustrations of prospective curative

The comptroller's failure to "make up" and file a "certified statement" as to delinquents is a mere irregularity: *Duluth v. Miles*, 73 Minn. 509.

¹ *Pickton v. Fargo* (N. D.), 88 N. W. Rep. 90.

² *Newell v. Cincinnati*, 45 Ohio St. 407.

³ A failure of the assessor to sign his roll: *Townsen v. Wilson*, 9 Pa. St. 270. A sale of seated land with unseated; the sale being good as to the proportion of the tax for which the unseated was chargeable, and the title passing after redemption expired: *Mitchell v. Bratton*, 5 W. & S. 451; *Campbell v. Wilson*, 1 Watts 503; *Harper v. McKeehan*, 3 W. & S. 238; *McCord v. Bergautz*, 7 Watts 487; *Dietrick v. Mason*, 57 Pa. St. 40. Paying over surplus moneys instead of giving a surplus bond: *Rogers v. Johnson*, 67 Pa. St. 43, citing and relying upon *Ash v. Ashton*, 3 W. & S. 510, and *Iddings v. Cairns*, 2 Grant's Cases, 88. The statute does not cure the want of a deed: *Hoffman v. Bell*, 61 Pa. St. 444. As to curing irregularities in general, see *Laird v. Heister*, 24 Pa. St. 452; *Cuttle v. Brockway*, 24 Pa. St. 145; *Heft v. Gephart*, 65 Pa. St. 510, 518; *Witherspoon v. Duncan*, 4 Wall. 210, 217.

⁴ Such a law has been sustained in New Jersey: *State v. Vanderbilt*, 33 N. J. L. 38. A Massachusetts statute provided that "if in the assessors' list, or their warrant and list, committed to the collector, there shall be any error in the name of any person taxed, the tax assessed to him may, notwithstanding such error, be collected of the person intended to be taxed; provided he is taxable, and can be identified by the assessors." This applied to the case of one taxed by his surname only: *Tyler v. Hardwick*, 6 Met. 470. And to the case of land assessed to J. S. & Son, when J. S. owned it: *Westhampton v. Searle*, 127 Mass. 502. See *Sargent v. Bean*, 7 Gray 125, where this statute was further considered. And for cases under a law for a like purpose in Ohio, see *Welker v. Potter*, 18 Ohio St. 85; *Upington v. Oviatt*, 24 Ohio St. 232. For other cases on this subject see *Weinreich v. Hensley*, 121 Cal. 647; *Haines Manuf. Co. v. Hargrave*, 129 Cal. 90; *Shoup v. Railroad Co.*, 24 Kan. 547; *Farnsworth Co. v. Rand*, 65 Me. 19; *Hill v. Graham*, 72 Mich. 659; *Bradley v. Bouchard*, 85 Mich. 18; *Menominee v. Martin Lumber Co.*, 119 Mich. 201; *State v. Burr*, 143 Mo. 209; *Grant v. Bartholemew*,

provisions are cited in the margin, and the number might be enlarged.¹

6. *Re-assessments.*² The method of curing defects by re-assessment³ of the tax is less open to abuse than any that has

58 Neb. 839; Carman v. Harris (Neb.), 85 N. W. Rep. 848; In re Munn, 165 N. Y. 149.

¹ See Davis v. McGee, 28 Fed. Rep. 867; Berthold v. Hoskins, 38 Fed. Rep. 772; San Francisco v. Pennie, 93 Cal. 645; Wilter v. Bachman, 117 Cal. 318; Weinreich v. Hensley, 121 Cal. 647; Lahman v. Hatch, 124 Cal. 1; Klumpke v. Baker (Cal.), 62 Pac. Rep. 137; Duggan v. McCullough (Colo.), 59 Pac. Rep. 743; Tampa v. Mugge, 40 Fla. 326; Hunter Stone Co. v. Woodward, 152 Ind. 474; Cooper v. Nevin, 90 Ky. 85; Millaudon v. Gallagher, 104 La. 713; Osburn v. Hide, 68 Miss. 45; Nelson v. Abernathy, 74 Miss. 164; Woodruff v. State, 77 Miss. 68; State v. Bank of Neosho, 120 Mo. 161; State v. Lounsberry, 125 Mo. 157; St. Louis & S. F. R. Co. v. Gracy, 126 Mo. 472; State v. Burr, 143 Mo. 209; State v. Wise, 12 Neb. 313; Twinting v. Finlay, 55 Neb. 152; Johnson County v. Tierney, 56 Neb. 514; Carman v. Harris (Neb.), 85 N. W. Rep. 848; State v. Plainfield, 46 N. J. L. 119; State v. Kearny T'p, 48 N. J. L. 125; State v. Lantz, 53 N. J. L. 578; Astor v. New York, 62 N. Y. 580; Eno v. New York, 68 N. Y. 214; In re Munn, 165 N. Y. 149; Nehasane Park Assoc. v. Lloyd, 167 N. Y. 431; Patterson v. Galliher, 122 N. C. 511; Gear v. Brown, 126 N. C. 238; Wells County v. McHenry, 7 N. D. 246; Bolton v. Cleveland, 35 Ohio St. 319; Morrow v. Smith (Okl.), 61 Pac. Rep. 366; Dayton v. Multnomah County, 34 Or. 239; Avant v. Flynn, 2 S. D. 153; Henderson v. Hughes County, 13 S. D. 576; Virginia Coal Co. v. Thomas, 97 Va. 527; Franklin Savings Bank v. Moran, 19 Wash. 200; Winning v. Eakin, 44 W. Va. 19; State v. Sponaule, 45 W.

Va. 415; McGhee v. Sampselle, 47 W. Va. 352; Ruggles v. Fond du Lac County, 63 Wis. 205; Hixon v. Oneida County, 82 Wis. 515; Hixon v. Eagle River, 91 Wis. 649; Neu v. Voegel, 96 Wis. 489.

² That assessors have made a defective assessment does not preclude their making a valid one: State v. Mining Co., 15 Nev. 385. Where the power to make a reassessment is not impugned, objections to the prior assessment are irrelevant: State v. South Orange, 49 N. J. L. 104. An assessment that has been held void serves no purpose in the re-assessment except to bring the improvement within the provisions of the charter providing for such reassessment: Cline v. Seattle, 13 Wash. 228; Bryan v. Summer, 17 Wash. 228. Assessments for street improvements will not be disturbed because of prior assessments therefor which have been declared void by the district court: Parker v. Atchison, 48 Kan. 574. An injunction against the collection of a tax is inoperative as against a reassessment: Emporia v. Bates, 16 Kan. 495. The re-assessment is not, however, to be considered a new tax: Fairfield v. People, 94 Ill. 244; Harwood v. North Brookfield, 130 Mass. 561. See Fox v. New Orleans, 4 Wall. 172; Mattingly v. District of Columbia, 97 U. S. 687. In New Jersey re-assessments cannot be made against lands purchased by the chancellor under foreclosure of mortgages representing funds in court: State v. Chancellor, 51 N. J. L. 414.

³ As to re-assessment laws in general, see Tweed v. Metcalf, 4 Mich. 579, 590; State v. Newark, 34 N. J. L. 236; In re Van Antwerp, 56 N. Y. 261.

hitherto been mentioned. Whether this be done by general law, which shall provide for all cases in which tax proceedings prove invalid, and authorize the same tax to be imposed on the persons or property that ought to be charged therewith, by proceedings begun *de novo*, or, on the other hand, shall assume the form of a special law providing for the like re-assessment in any particular case, it is scarcely possible that it should cause serious injustice beyond what is incident to all tax legislation. In the new proceedings the party concerned will have the opportunity to watch the various steps, and to be heard in review of them, that he has in any case, and he will be precluded by nothing that has taken place in the proceedings which have proved abortive. The re-assessment will be for the purpose merely of enforcing against him a duty which he was likely to evade, by reason of the non-feasances or misfeasances of the officers who ought to have enforced it; and as the new proceeding will give him the same opportunity of being heard that is given in other cases, and will be conducted on principles that operate generally, he has no reasonable ground of complaint. The only cases in which hardship is likely to be inflicted by such legislation are those in which a tax is re-assessed upon an estate which has changed hands since the tax should have been collected from it;¹ but a proper examination of the records will, in most cases, lead the purchaser to a dis-

The acceptance by a board of supervisors of a committee's report recommending that authority be granted the township supervisor to re-assess taxes reported as properly returned, sufficiently authorizes such re-assessment: *Bump v. Jepson*, 106 Mich. 641. What held to be a re-assessment: *Hunt v. Perry*, 165 Mass. 287. A town vote for an assessment "on the original appraisal of the school property" has been held a sufficient appraisal in Massachusetts: *Sutton Manuf. Co. v. Sutton*, 108 Mass. 106; *Halleck v. Boylston*, 117 Mass. 469. An unauthorized interlineation in a completed assessment roll was held not to be a re-assessment or an amendment of the original assessment, but simply an unwarranted

alteration, which would create no lien: *Lyon v. Alley*, 130 U. S. 177.

¹That such a change of title does not prevent a re-assessment, see *Tallman v. Janesville*, 17 Wis. 51; *Cross v. Milwaukee*, 19 Wis. 509. Under a statute providing that re-assessed taxes on real estate shall constitute a lien on the land unless the estate has been alienated between the first and second assessments, there is an alienation where, after an erroneous assessment to the holders of the legal title to the land, the mortgagee causes the land to be sold and bids it in: *Davis v. Boston*, 129 Mass. 377. It is held in New York that where an officer with competent authority discharges an assessment of record, and one buys and pays for the land in

covery of the liability, and enable him to provide against it. Where the tax itself was originally void by reason of having been levied for an illegal purpose, it is obviously impossible to breathe vitality into it by new proceedings.¹ If it was void because of want of legislation justifying it, it may be re-assessed after proper legislation has been had.² If it was void because of a disregard of apportionment, or for any reason affecting a part of the list only, it may be re-assessed with the proper corrections, where corrections are practicable.³ And here it may

reliance thereupon, the lien cannot afterwards be revived to his prejudice on the ground that the discharge was by mistake: *Curnen v. New York*, 79 N. Y. 511. In New Jersey, where an assessment for a municipal improvement is held invalid, the re-assessment may be made to relate back to the date of the original assessment, notwithstanding mesne purchasers or encumbrances: In re Report of Commissioners of Adjustment, 49 N. J. L. 488; *New Jersey Sinking Fund Com'rs v. Linden*, 40 N. J. Eq. 27. All persons are bound to take notice of a statute providing for the relevy of taxes or assessments for public improvements where the first levy is informal for want of sufficient authority, or other cause, and to know that, under it all taxes or assessments, coming under its provisions, and not void because of some incurable irregularity, may be made valid by a relevy of the same: *Manley v. Emlen*, 46 Kan. 655.

¹ *Dean v. Charlton*, 23 Wis. 590; *Dean v. Borschenius*, 30 Wis. 236; *Dill v. Roberts*, 30 Wis. 178; *Plumer v. Supervisors*, 46 Wis. 163.

² *Mills v. Charleton*, 29 Wis. 400. See In re Van Antwerp, 56 N. Y. 261. The re-assessment may be made to cover the defect of the original levy's having been made under an unconstitutional statute: *Chester v. Pennell*, 169 Pa. St. 300; *Chattanooga v. Railroad Co.*, 7 Lea 561; *Boyd v. Hunt*, 13 Lea 252; *Trustees v. Guenther*, 19

Fed. Rep. 395. Before re-assessment under the curative act no prior adjudication to establish the invalidity of an assessment levied under an unconstitutional statute is necessary: *State v. Ballard*, 16 Wash. 418. Under a statute empowering commissioners to determine, in all cases where any assessment for public improvements remains unpaid, how much of such arrearages ought to be paid, any sum which has been assessed for a public improvement may become in whole or in part an "arrearage," within the meaning of the act, without reference to the validity of the assessment or invalidity of the law under which it was imposed: *State v. Newark*, 52 N. J. L. 138.

³ See *Dean v. Charlton*, 27 Wis. 522; *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 451; *Brevoort v. Detroit*, 24 Mich. 322. As to re-assessments to cure irregularities, see *Emporia v. Morton*, 13 Kan. 569; *Byram v. Detroit*, 50 Mich. 56; *People v. Wemple*, 53 Hun 197; *Kaehler v. Dobberpuhl*, 56 Wis. 480. A statute which, in case of an invalid or irregular tax, provides that it may be assessed by the assessors for the time being, "to the just amount to which, and upon the estate or person to whom, such tax at first ought to have been assessed," may be used to correct an error which extends to the entire list: *Goodrich v. Lunenburg*, 9 Gray 38. It authorizes a re-assessment where property held in trust by a

be observed that a judicial decision against the first proceedings, if based upon errors and defects merely, and not upon the vicious nature of the tax itself, is not a bar to a re-assessment.¹ Such a decision merely points out the error, and the re-assessment may be of all others the most proper and effectual way of correcting it.

non-resident trustee has been assessed to the resident *cestuis que trustent* jointly instead of severally, their interests being several: *Hunt v. Perry*, 165 Mass. 287. It also justifies a re-assessment, to the wife, of a tax wrongfully put to the husband and abated the previous year: *Hubbard v. Garfield*, 102 Mass. 72; and see *Overing v. Foote*, 43 N. Y. 290. Where, in setting off part of a town, it was provided that the estates and inhabitants should pay to the same persons taxes to be collected in the same manner as though there had been no change, a re-assessment could be made of land assessed before the change to the wrong person: *Market Bank v. Belmont*, 137 Mass. 407. Where a tax levy made by a city council is void for failure to specify the purpose for which the tax was levied, the council may subsequently make a proper levy: *Somerset v. Somerset Banking Co. (Ky.)*, 60 S. W. Rep. 5, citing *Levi v. Louisville*, 97 Ky. 394. In Wisconsin, where a tax is set aside for a defect going to the groundwork of the tax, a re-assessment is ordered under judicial supervision: *Bradley v. Lincoln County*, 60 Wis. 71; *Woodruff v. Depere*, 60 Wis. 128; *Bass v. Fond du Lac County*, 60 Wis. 516. In the absence of statutory authority, after taxes have been assessed to a stranger to the title to land, and, under such assessment, a sale has been made, a city is without power to refund, to refuse to re-assess to the true owner, and to sell again: *Dowell v. Portland*, 13 Or. 248. Where several

parcels of land owned by a non-resident, but occupied by tenants, were assessed as non-resident lands, and not in the names of the tenants, the assessment was void, and the comptroller had no authority to relevy the taxes so assessed: *People v. Wemple*, 53 Hun 197. Where a statute provides that assessors, when they discover that they have by mistake omitted any polls or estate liable to be assessed, may by a supplement assess such polls or estate, the "omission" mentioned in the statute does not mean that an erroneous judgment of the value of the estate can so be corrected: *Dresden v. Bridge*, 90 Me. 489.

¹ *Richman v. Muscatine Supervisors*, 77 Iowa 513; *Auditor-General v. Gurney*, 109 Mich. 472; *Reynolds v. Duluth*, 59 Minn. 522; *Howard Savings Inst. v. Newark*, 52 N. J. L. 1; *Fountain v. Newark*, 57 N. J. Eq. 76; *Dean v. Charlton*, 23 Wis. 590. Compare *Butler v. Saginaw Supervisors*, 26 Mich. 22. In Wisconsin, where a judgment is rendered setting aside taxes, a stay of proceedings is ordered until re-assessment can be had: *Plumer v. Supervisors*, 46 Wis. 163; *Single v. Stettin*, 49 Wis. 645; *Kingsley v. Supervisors*, 49 Wis. 649; *Monroe v. Fort Howard*, 50 Wis. 228; *Morrow v. Green Bay*, 55 Wis. 112; *Johnston v. Oshkosh*, 65 Wis. 473. The statute for re-assessment applies to suits begun before its passage: *Flanders v. Merrimack*, 48 Wis. 567. As to re-assessment after judgment for taxes has been refused, see *Hyde Park v. Waite*, 2 Ill. App. 443.

It is no objection to a re-assessment that the officer making it has come into office since the original assessment was made,¹ or that on the first assessment some persons paid under a stipulation that the payments should be allowed on re-assessment.² Re-assessments may be authorized to reach property before omitted or undervalued,³ or where taxes provided by law have failed to be assessed at the proper time,⁴ or where there has been a failure to require the payment of a tax;⁵ and where unpaid taxes constitute a lien on the land the statute of limitations does not bar the right to re-assess them.⁶

Special assessments for local improvements may be re-assessed as well as general taxes,⁷ but statutory authority is required.⁸

¹ *Trustees v. Guenther*, 19 Fed. Rep. 395.

² *Fairfield v. People*, 94 Ill. 244; *Petty v. Myers*, 49 Ind. 1.

³ *Harwood v. North Brookfield*, 130 Mass. 561; *People v. Brooklyn Assessors*, 92 N. Y. 430; *Wheeling v. Hawley*, 18 W. Va. 472. See *ante*, p. 511. But only under express legislative authority: *Perry County v. Railroad Co.*, 58 Ala. 546. Exemption obtained without right—error corrected by assessing omitted amount on supplemental roll: *Parker v. New Orleans Gas Light Co.*, 44 La. An. 753.

⁴ Under a statute providing that if any taxes provided by law for school purposes shall fail to be assessed at the proper time, the same shall be assessed in the succeeding year, such assessment may be made in the succeeding year where it failed in the proper year on account of the school board's failure to certify it to the township clerk in time for the supervisor to spread it on his roll: *Wilcox v. Eagle Tp.*, 81 Mich. 271.

⁵ *Delaware Div. Canal Co. v. Commonwealth*, 50 Pa. St. 399, which holds that a failure to require the payment of a tax, or the decision of the auditor-general that it is not

payable, or the receipt of taxes for subsequent years, works no estoppel against the state.

⁶ *Cook Co. v. Auditor-General*, 79 Mich. 100.

⁷ *Brevoort v. Detroit*, 24 Mich. 322; *May v. Holdridge*, 23 Wis. 93. The Kansas curative act providing for re-assessment and relevy of taxes that are for any cause illegal is general in intent and operation, and an assessment for local improvements, duly levied in pursuance thereof, is valid: *Newman v. Emporia*, 41 Kan. 583. Statutes authorizing re-assessments for local improvements held constitutional: *West Chicago Park Com'rs v. Sweet*, 167 Ill. 326; *Manley v. Emlen*, 46 Kan. 655; *Baltimore v. Ulman*, 79 Md. 469; *State v. District Court*, 77 Minn. 248; *State v. Newark*, 52 N. J. L. 141; *New Jersey Sinking Fund Com'rs v. Linden*, 40 N. J. Eq. 27; *Fountain v. Newark*, 57 N. J. Eq. 76; *Frederick v. Seattle*, 13 Wash. 498; *McNamee v. Tacoma* (Wash.), 64 Pac. Rep. 791; *Sanderson v. Herman*, 108 Wis. 662. Where assessments for benefits for a local improvement had been held void because the statute made no provision for notice or hearing, a sub-

⁸ *Tingue v. Port Chester*, 101 N. Y. 294; *Franklin Savings Bank v. Moran*, 19 Wash. 200.

In some jurisdictions it is held that where the amount of a special assessment has been received either through payment or through the sale of the assessed property, the right to re-assess such property for the improvement is extinguished even though the assessment is invalid;¹ but in other states payments may be treated as advances and refunded or credited to the owners under the new assessment.² The conditions upon which re-assessment is allowed vary considerably according to the local laws,³ and so does the time within which new assessments

sequent law directing another assessment, and providing for notice on the question of apportionment as between those who had not paid under the void assessment, was held valid: *Spencer v. Merchant*, 125 U. S. 345. When an assessment for a local improvement is in any respect defective, the legislature has power to assess the tax by its own direct action upon the property benefited, upon notice to the owners, and a reasonable opportunity for hearing; and whatever the legislature can do in this respect can be delegated to the local authorities: *Jones v. Tona-wanda*, 158 N. Y. 438.

¹ *State v. Elizabeth*, 51 N. J. L. 485; *Diefenthaler v. New York*, 111 N. Y. 331; *Budge v. Grand Forks*, 1 N. D. 309; *Danenhower v. District of Columbia*, 7 Mackey 99.

² *Wood v. Strother*, 76 Cal. 545; *Freeport St. R. Co. v. Freeport*, 151 Ill. 451; *Philadelphia & R. Coal, etc. Co.*, 158 Ill. 9; *Tacoma Land Co. v. Tacoma*, 14 Wash. 700. See *Spencer v. Merchant*, 125 U. S. 345. That some of the property owners under a defective ordinance paid less than the amount required by a proper assessment under an ordinance curing the former one was held no defense against such assessment: *Bacon v. Savannah*, 105 Ga. 62.

³ *Gray v. Lucas*, 115 Cal. 430; *Gray v. Richardson* (Cal.), 55 Pac. Rep. 603; *Frenna v. Sunnyside Land Co.*, 124 Cal. 437; *Hornung v. McCarthy*, 126 Cal.

17; *Westall v. Altschul*, 126 Cal. 164; *Ede v. Cuneo*, 126 Cal. 167; *Pardridge v. Hyde Park*, 131 Ill. 537; *Carlisle v. Clinton*, 140 Ill. 512; *East St. Louis v. Albrecht*, 150 Ill. 506; *Freeport St. R. Co. v. Freeport*, 151 Ill. 451; *Davis v. Litchfield*, 155 Ill. 384; *West Chicago Park Com'rs v. Farber*, 171 Ill. 146; *People v. Pontiac*, 185 Ill. 437; *Manley v. Emlen*, 46 Kan. 655; *Baltimore v. Ulman*, 79 Md. 469; *Townsend v. Manistee*, 88 Mich. 468; *Smith v. Detroit*, 120 Mich. 572; *State v. Egan*, 64 Minn. 331; *State v. District Court*, 77 Minn. 248; *State v. Passaic*, 51 N. J. L. 109; *People v. Buffalo*, 147 N. Y. 675; *Chester v. Pennell*, 169 Pa. St. 300; *Flewelling v. Proetzel*, 80 Tex. 191; *Frederick v. Seattle*, 13 Wash. 428; *Cline v. Seattle*, 13 Wash. 444; *Sanderson v. Herman*, 108 Wis. 662. Under a city charter providing that whenever a special assessment shall, in the council's opinion, be invalid by reason of any irregularity in the proceedings, the council shall have power to order a new assessment, the vote of a majority of the council is sufficient to rescind a resolution passed by a two-thirds vote ordering a special assessment: *Townsend v. Manistee*, 88 Mich. 408. Where the court has ordered a special street assessment to be recast as authorized by the statute, it will be presumed, in the absence of a showing to the contrary, that the court acted upon sufficient cause, and within the power

may be issued.¹ The same is true of the procedure upon re-assessment.²

Where a tax upon a parcel of land is re-assessed upon a part

conferred: *Schemick v. Chicago*, 151 Ill. 336. A void assessment cannot be validated by a revision thereof made on the application of a dissatisfied property owner, and he will not be estopped from contesting its validity thereafter: *Windsor v. District of Columbia*, 7 Mackey 96. See *Bates v. District of Columbia*, 7 Mackey 76. Re-assessment is not rendered necessary by amending an ordinance so as to provide that the payments shall be collected in instalments: *Trimble v. Chicago*, 168 Ill. 567.

¹ In California it was held, prior to 1889, that when a contractor failed in his suit to foreclose the lien by reason of certain defects in the assessment he was entitled to another assessment freed from those defects, and that there was no statutory limitation of time for the issue of such re-assessment: *Himmelman v. Coffran*, 36 Cal. 411; *Dyer v. Scalmanini*, 69 Cal. 637; *Wood v. Strother*, 76 Cal. 545. But by the amendment of 1889, the legislature fixed the conditions upon which a second assessment might be issued, and the time within which an application therefor should be made: *Ede v. Cuneo*, 126 Cal. 167. Under the Illinois city and village act providing that a new assessment for improvements may be made when the former one is set aside, the right to make a new assessment accrues only when the former assessment is set aside, and from that time the statute of limitations runs: *Murray v. Chicago*, 175 Ill. 340. An order of court vacating an assessment roll and ordering a new roll to be prepared, if made while the assessment proceedings are still pending, is not barred by the statute of limitations, although more than

twelve years have elapsed since the original assessment was made: *Partridge v. Hyde Park*, 131 Ill. 537. In New Jersey it is held that the power to appoint new assessors to make a re-assessment in place of one set aside continues until a legal assessment is made: *State v. Essex Public Road Board*, 46 N. J. L. 126.

² Where, under a city charter, the court on an appeal from a local assessment orders a re-assessment, the order should specify the defects in the assessment, so as to be a guide to the board of public works: *State v. Ensign*, 55 Minn. 278. The court being expressly authorized by statute to order the assessment recast as to all or part of the land, may order it recast as to lots as to which no objections have been filed, and as to which default has been entered, such an order having the effect of setting aside the default: *Browning v. Chicago*, 155 Ill. 314. Where a special assessment to pay for a public improvement is invalid by reason of failure to give the notice required by statute, a new assessment should be made as provided by the law at the time the contract was made, though in the meantime the city's charter has been amended so as to provide for assessments according to frontage instead of valuation, and for payment by the city for street intersections: *Soule v. Seattle*, 6 Wash. 315. Where the statute authorizes the assessors, when a new assessment has been ordered, to "proceed as provided in the original assessment," they may determine what lands are benefited, and are not limited to those lands which the original assessors deemed to be benefited: *State v. Essex Public Road Board*, 51 N. J.

of it, the re-assessment is void.¹ It is not competent on a re-assessment to add penalties which were in the original tax, and which, with that tax, were swept away by statute.² A re-assessment should be on the valuation of the year when the original tax was laid.³

Judicial corrections. Still another method of curing defects which may here be noticed is that which is sometimes provided by statutes allowing the parties concerned to have a judicial review of the proceedings on a proper application.⁴ We do not refer now to those cases in which proceedings are, under general laws, referred to a court at some stage for confirmation, but to those in which the proceedings are attacked

L. 166. The report of a re-assessment made after partial vacation by the court of assessment for a street improvement will not be vacated merely because on its face it seems to give awards to all owners of land taken or damaged, and to levy assessments on all lands benefited. The court, looking at all the proceedings, will hold the legal effect to be to make new awards and assessments in lieu only of those previously annulled: *State v. South Orange*, 49 N. J. L. 104. A curative act providing for the completion of unauthorized public improvements, and the assessment of the cost, contemplates that assessments be made on the basis of a *quantum meruit*, and the contracts under which the work was done are competent evidence of the cost, and may be considered in making the assessment: *Bingaman v. Pittsburgh*, 147 Pa. St. 353; *Appeal of Travers*, 152 Pa. St. 129.

¹ *Scheiber v. Kaehler*, 49 Wis. 291.

² *State v. Jersey City*, 37 N. J. L. 39. The legislature, in notifying and relieving a void tax, was held to have the power to levy interest on the same from the date of the void assessment: *Collins v. Long Island*, 132 N. Y. 321.

³ *Davis v. Boston*, 129 Mass. 377.

⁴ For cases of this nature, see *State*

v. Jersey City, 35 N. J. L. 381; *Miller v. Graham*, 17 Ohio St. 1. The statute under which each of these cases was decided was quite peculiar. That of New Jersey forbade any collateral questioning of the proceedings in the case of certain assessments for local objects, but permitted them to be reviewed at any time on *certiorari*, or other proper proceeding, in the supreme or circuit court. There is no constitutional objection to a law which provides for the appointment by the circuit judge of commissioners to review the valuations made by the county board: *State v. Myers*, 52 Wis. 628. Where an appeal from the assessment of a corporation by the proper state officer was authorized to be taken to a court, it was held that the conclusion by the court upon the appeal was in no proper sense a judgment, but only an assessment, and therefore error would not lie upon it: *Auditor-General v. Pullman, etc. Co.*, 34 Mich. 59. Under a statutory authority to a court to amend the proceedings on a special assessment so as to do justice to all, the court will not, on application of a contractor who has failed to obtain full payment, make amendments which compel any taxpayers to do more than justice requires: *Loeser v. Redd*, 14 Bush 18.

after their conclusion, when they are subjected to a judicial examination with a view to the correction of any errors, if correction shall be found practicable.¹

Corrections by amendment. Of the errors that creep into the records of tax proceedings very many are merely clerical, or occur in consequence of a failure to put in proper form the evidence of transactions in themselves correct. Tax proceedings must stand by the record; and a failure to make the proper record may be as fatal as a failure to take the proceeding of which the record should have been made.²

If, however, the defect in a record is obviously clerical and nothing more; that is to say, if the record on its face sufficiently shows that the proper steps have in fact been taken, but there is some error on the part of the recording officer in putting the evidence upon the record in precise conformity to the law; some omission of a word, or the accidental employment of one word for another, or any similar error which cannot mislead,—the mistake may be overlooked, and the court, when the record becomes the subject of judicial investigation, may by intendment supply what is omitted, and correct what is erroneous, and then sustain the record as though the proper corrections had been made by the recording officer himself.³ But

¹ In New York special assessments were formerly referred to a court for confirmation, and all parties given an opportunity for a hearing. Now, on the other hand, a party objecting to an assessment brings the matter to the attention of the court on petition to vacate.

² Proof that the facts stated in a defective certificate of the city engineer, required to be recorded as a condition to an assessment's becoming a lien, are true, held not to cure the defect: *Frenna v. Sunnyside Land Co.*, 124 Cal. 437.

³ Mr. Blackwell, speaking of *Atkins v. Hinman*, 7 Ill. 437, 451, says: "Where, in a collateral action, amendments of the tax record were permitted in the circuit court, the supreme court sustained them upon

the ground that they were only corrections of clerical mistakes, and could prejudice no person's rights; that they brought no new matter in the case, and gave no additional efficacy to the proceedings, but simply put them in stricter conformity to the provisions of the statute. And it must be remembered that these amendments were of the judgment and precept under the Illinois statute of 1839, and the anterior proceeding on the files of the court furnished the facts whereon the amendments were based." *Blackwell on Tax Titles*, 399. A clerical error in the omission of the dollar mark, in the certificate of levy upon which a special school-tax was extended, in front of the amount to be levied, may be corrected by amendment in an action to

corrections cannot be made by intendment unless the necessary facts appear, either in the record as actually made, or in the official documents on file from which the record should have been drawn up; the courts cannot imply the existence of facts which are not recited anywhere in the official proceedings.

Where the proceedings are conducted under the supervision of a court of record, or must go before such a court for confirmation, the facts which do not appear of record may be supplied by leave of the court, on a proper showing by affidavit.¹ The authority of the court to permit such amendments, in order to make the record correspond to the facts, is probably not different from what it is to permit amendments in the exercise of its ordinary jurisdiction.

enforce the tax: *Keokuk & H. B. R. Co. v. People*, 161 Ill. 132. Where the commissioners properly certify to the county court their assessment of benefits, a clerical error in the caption designating the roll as "assessment of a special tax," may be corrected so as to show it to be an assessment for special benefits: *Springfield v. Sale*, 127 Ill. 359. Where an inspection of an appraisal would show the date thereon to be erroneous, the error is not fatal: *Wilmot v. Lathrop*, 67 Vt. 671.

¹*Young v. Thompson*, 14 Ill. 380, 381. A clerical error in dating the county treasurer's report of a tax-sale is cured by the order confirming the sale: *Detroit F. & M. Ins. Co. v. Wood*, 118 Mich. 31. Where the certificate of publication of the collector's notice of his intended application for judgment for taxes is deficient, it may, even after judgment, be amended by order of the court, upon notice being given to the opposite party: *Dunham v. Chicago*, 55 Ill. 357, citing *Coughran v. Gutcheus*, 18 Ill. 390. Pending the application for judgment the certificate of publication of a delinquent tax-list may be amended by filing a new certificate, and by adding the name of the county to the file-mark of the clerk of the county

court: *McChesney v. People*, 178 Ill. 542. In Illinois the court has by statute power, where a tract of land owned by one person is arbitrarily divided and each parcel separately assessed, to order that the sum of the two assessments stand as an assessment against the tract: *Brooks v. Chicago*, 168 Ill. 60. Under the Illinois statute giving the court power to amend special assessments, an amendment stating that it was not intended to include as part of the property assessed the soil of the street to improve which the assessment was made is proper: *Leman v. Lake View*, 131 Ill. 388. And an amendment of the assessment so as to relieve rear lots improperly assessed may be allowed: *Springfield v. Greene*, 120 Ill. 269. An affidavit of the mailing of notices of application for confirmation of a special assessment may at any time after judgment be amended so as to show the truth of what was done in the way of service, where the *bona fide* rights of third persons have not intervened: *Hinkle v. Mattoon*, 170 Ill. 316. A void certificate of a special school-tax cannot be amended by order of court on application for judgment for delinquent taxes, by virtue of the Illinois statute allowing on such applications amendments to cure

If the facts to be supplied are such as affect individual cases on the roll, and may prejudice the parties, it would seem to be a matter of right that the persons to be affected should have notice of an application to amend, and an opportunity to meet the showing. This should certainly be so if the application is made at a stage of the proceedings when the party, if the correction is made, will have no opportunity subsequently to raise any questions regarding the propriety or justice of the amendment. As an illustration, the case may be instanced of a judgment which is erroneous by reason of some defect which it is desired to supply by an amendment; in such case clearly the party against whom the judgment is to be validated should be allowed the privilege to contest the truth of that which it is proposed to put upon the record, and by which it is expected to bind him. And the application ought to be a distinct proceeding for the purpose, and not be made in a suit brought to recover lands which have been sold under the judgment.¹ On such an application counter affidavits would be

omissions or defects in the tax proceedings: *People v. Smith*, 149 Ill. 549. This case is distinguished in *Spring Valley Coal Co. v. People*, 157 Ill. 543, and followed in *Chicago & A. R. Co. v. People*, 171 Ill. 544, and in *People v. Chicago & N. W. R. Co.*, 183 Ill. 311. On such an application a town collector's failure to note in writing the cause of the failure to collect a tax on personalty, and to make and enter upon the collector's book a certain affidavit, may be corrected by amending the record: *Shelbyville Water Co. v. People*, 140 Ill. 545. As to amending records by leave of court, see, also, *Allen v. Archer*, 49 Me. 346; *Bath v. Whitmore*, 79 Me. 182; *State v. Phillips*, 102 Mo. 664; *Smith v. Messer*, 17 N. H. 420; *Bean v. Thompson*, 19 N. H. 290; *Taft v. Barrett*, 58 N. H. 447; *State v. Corson*, 50 N. J. L. 381; *Philadelphia v. Richards*, 124 Pa. St. 303.

¹In an action of ejectment, to recover possession of land by virtue of a tax title, motion was made to

amend the precept. *Treat*, Ch. J., says: "If such an amendment is allowable, it should only be made upon a distinct application to the court for that purpose. The application should have no connection with any other case. A contrary course would introduce much confusion and inconvenience into judicial proceedings. A court engaged in the trial of a case ought not to be delayed and embarrassed by a motion to amend the record of another proceeding, which is but collaterally in question before it. Such an application might involve the necessity of bringing in other parties and different interests before the court:" *Pitkin v. Yaw*, 13 Ill. 251, 253. In another case, the same judge, in speaking of a defective judgment on a delinquent tax-list, says: "It may be that the circuit court, upon a proper application, will allow the record to be so amended as to show when the judgment was rendered. But until the record is thus perfected no title can be asserted under the

admissible, and the court ought to insist upon a clear showing of the facts, before giving its sanction to the introduction of any changes in a record not originally made under its supervision. There is a manifest difference between such a case and the correction of errors in the record of proceedings which have been taken in the court itself, and of which the judges themselves may be presumed to have some recollection.

By statute in some states full authority has been conferred upon some statutory board or officer to make or permit to be made such corrections in tax proceedings as may be consistent with justice. Of such statutes it may be said, *first*, that the authority they confer cannot go beyond that which might be exercised by the legislature itself in curing defects in tax proceedings; and *second*, that the authority exercised must be within the permission granted; nothing is to be taken by intendment.¹

proceedings." *Young v. Thompson*, 14 Ill. 380, 381.

¹ A supervisor employed to make a new roll, where the one already made is defective, cannot under this authority take the old roll, make erasures and changes, and deliver it to the collector for the collection of the tax, and if he should do so, and attempt be made to collect, both officers will be liable in trespass: *Ferton v. Feller*, 33 Mich. 199. Under the California code permitting the assessor, with the consent of the district attorney, to supply or correct omissions, errors, or defects in the assessment book at any time before the sale for delinquent taxes, it is competent for the assessor, under the district attorney's written instructions, to supply the omission on the original roll of the "total tax" in the column provided for it, where the total tax appeared in the column headed "road tax:" *San Luis Obispo County v. White*, 91 Cal. 432. A supervisor's failure to incorporate in his roll any valuation of property does not avoid the tax where the board of review seasonably supplies the de-

fect: *Auditor-General v. Sparrow*, 116 Mich. 574. The date of the certificate of the board of review is immaterial under the statute authorizing the board of supervisors to remedy amendments and defects: *Auditor-General v. Ayer*, 122 Mich. 136. As to amendments permitted by statute in Iowa, see *Jones v. Tiffin*, 24 Iowa 190; *Conway v. Younkin*, 28 Iowa 295. The power conferred by the Iowa code upon the county auditor to "correct any clerical or other error in the assessment or tax-book," includes authority to assess lands omitted by the assessor through mistake: *Robb v. Robinson*, 66 Iowa 500; *Parker v. Van Steenburg*, 68 Iowa 174. See, also, as to the county auditor's corrective power, *Ridley v. Doughty*, 85 Iowa 418; *Smith v. McQuiston*, 108 Iowa 363. In the latter case it is said that the auditor's authority "includes the power to determine when a mistake has been made." As to the statutory powers of boards of assessors and tax commissioners in New York to correct or supply errors and defects, see *People v. Wilson*, 119 N. Y. 515; *Peo-*

There are undoubtedly cases in which ministerial officers may correct errors without judicial permission;¹ and there are also some cases in which it would be apparent they could have no such power. Still other cases may be open to reasonable doubt.

Where the defect consists merely in the failure to copy into a book of records the official document which evidences some legal transaction, the proper recording officer may correct it at any time, by making the required record. This may be done by the officer who should have done it in the first place, or it may be done by his successor in office. But where the document which should go upon record is defective, a case of more difficulty is presented. Many cases involving the right to make amendments have been considered in the state of New Hampshire, and it may be useful to notice them.

In a very early case the validity of a town vote to raise money was in question, and the court, while the cause was on trial, permitted the record to be amended so as to show that the proper vote had been had. The amendment was made by the person who was town clerk at the time the meeting was held; and the case does not show that he was still in office. The authority to make the amendment was not much considered; the judge contenting himself with saying that, "On this point we think that great care must be taken that amendments be made only according to the fact; but we have no doubt that a record may be amended to conform to the truth."²

ple v. Board of Assessors, 137 N. Y. 201; People v. Coleman, 43 Hun 581; People v. Jones, 43 Hun 131; People v. Barker, 11 Misc. Rep. 262. It is held in Pennsylvania that the conclusion of the auditor-general that a corporation is not liable under its charter to a tax on its capital stock cannot be corrected by his successor and the tax account restated, for the reason that the statute gives him power to correct only clerical errors: Commonwealth v. Pennsylvania Co., 145 Pa. St. 266.

¹ Where, in transcribing assessments, clerical error in names is committed, it may be corrected without notice: Chamberlain Banking House

v. Woolsey, 60 Neb. 516. Where, in the copy of an assessment roll, the dollar-mark was omitted before the valuation figures, the informality may be corrected by the assessor or treasurer: Haley v. Elliott, 20 Colo. 379. The county clerk, before the delivery of the tax-books, may amend his record by showing when the levy of a road tax was made: Ohio & M. R. Co. v. People, 119 Ill. 207. Power of board of equalization, after mistake in published notice, to adjourn and correct its proceedings: Black v. McGonigle, 103 Mo. 192.

² Bishop v. Cone, 3 N. H. 513, 516, per Richardson, Ch. J., who cites,

In the next case in which a like question was raised the point was more fully considered. It was admitted that there were defects in the record of town proceedings which would be fatal to a tax title then under consideration in a case on trial, unless they could be cured. The defects are summed up by the court and the case disposed of as follows: "The return of the posting up of the warrant for the town meeting is insufficient. It does not state when it was posted up. Nor does it show that it was posted at a public place. It does not appear that Thirston, who was chosen collector, took the oath of office prescribed by law. And there are defects in the return of the collector, to which exceptions have been taken.

"The tenants move that these proceedings may be amended. It has been already settled that the records of towns may be amended to conform to the truth of the fact.¹ The amendment must be made by the person who was in office at the time.²

"It seems probable that, in the prior cases where amendments have been allowed, the officers who were permitted to make them were not in office at the time; if they were, it must have been under subsequent election; and the right to have the amendment made cannot depend upon the question whether the officer has again been elected. The form in which such amendments are to be made has never yet been settled. It would be very dangerous to sanction alterations of the books themselves by erasures and interlineations. And we are of opinion that they should be made only upon evidence showing the truth of the facts, and then by drawing out in form the amendment which the facts authorize. The amendment, with the order under which it is made, may then be annexed to the books where the original is recorded, so that the whole matter will appear; and, in furnishing copies, the original and amendment should both be furnished.

as authority, *Welles v. Battelle*, 11 Mass. 477, and *Taylor v. Henry*, 2 Pick. 397. The record as amended is as conclusive of the facts recited as it would have been if made correct at first: *Halleck v. Boylston*, 117 Mass. 469. See *Kansas City, etc. R. Co. v. Tontz*, 29 Kan. 460.

¹ Citing *Bishop v. Cone*, 3 N. H. 513; *Welles v. Battelle*, 11 Mass. 477; *Cardigan v. Page*, 6 N. H. 182. See, also, *Boston Turnpike Co. v. Pomfret*, 20 Conn. 590; *Chamberlain v. Dover*, 13 Me. 466; *Allen v. Archer*, 49 Me. 346; *Pierce v. Richardson*, 37 N. H. 306.

² *Taylor v. Henry*, 2 Pick. 397.

“But it is objected, on the part of the demandant, that no amendment ought to be made to her prejudice. That, when she purchased, these defects in the vendor’s title were apparent, and that she must be presumed to have purchased with knowledge that the title was defective.

“The general rule is that amendments of records are made with saving of the rights of third persons acquired since the existence of the defect.¹

“To apply this rule, however, to all cases of defects in sales of lands for taxes, would, in effect, be very nearly denying a right to amend; as the owner of the land sold would attempt to defeat any amendment by conveying to some friend who would bring a suit in his behalf. It would, at least, be necessary to confine the application of the principle to cases where the land had been actually conveyed *bona fide*.

“But instances might exist when the purchaser, although he might not have found upon the records all that was necessary to make a formal and valid record, might have been well assured, from what he did find, that all that was necessary had in fact been done.

“For instance, in relation to the two first defects in the records in this case — in the return of the warning of the meeting, and in the record of the oath of the collector — although these records are not sufficient in point of law, they lead the mind of any one to the belief that what was requisite was probably done. And in such cases, where the fact appears to be stated, but not in a formal manner, there is no reason why he who purchases should not be subjected to the same liability to have the amendment made, and the record put in form, that his grantor would have been, had he attempted to recover the land.

“There are cases where, although all that is required may not appear of record, it may be left to the jury to presume that all that was required was done. As in *Bishop v. Cone*,—although the application of the principle in that case may, perhaps, have been questionable, on account of the transactions having been so recent, that, if the truth would have warranted it, an amendment might have been made. Whether that principle could be applied against a subsequent purchaser, it is not

¹ Citing *Chamberlain v. Crane*, 4 N. H. 115; *Bowman v. Stark*, 6 N. H. 159.

necessary to determine. But where what is necessary is, although not formally stated, so far set down as to lead to a belief that a correct record might have been made, there seems to be no reason why a purchaser, who has access to the records, should not take it subject to a right to have the record put in form, if the truth will warrant it.

"When, on the other hand, nothing appears upon the record in relation to any particular fact necessary to make out a title, nor is anything set down from which it is naturally to be inferred that the fact existed, a subsequent *bona fide* purchaser ought not to have his title defeated by supplying a record instead of amending a record."¹

The subsequent cases in New Hampshire are in accord with these, and fully sustain them in their conclusions.² It is said

¹ Gibson v. Bailey, 9 N. H. 168, 178, per Parker, Ch. J. The judge thereupon proceeds to say that "upon these principles, if the facts will warrant it," the various defects which he points out in detail may be amended. But he adds, "we must first have evidence to show that these amendments may be made with truth."

² On the trial of Bean v. Thompson, 19 N. H. 290, involving the validity of a tax voted at a town meeting, it appearing that there was no return upon the warrant calling the meeting, the selectmen who were in office when it was held were permitted, on motion, to make the proper return. Woods, J., says: "Leave is often granted to officers, whose returns of their doings, or records of public transactions, are, by law, made evidence to correct errors or to supply omissions, to conform to the truth. The interest which the public have in the correctness and fullness of the record, and the responsibility of the officer himself for the accuracy of his own doings, are primarily a good cause for granting such indulgences tending to the promotion of reasonable objects. And it has never been deemed an objection to the amend-

ment of a return or record, that proceedings were pending which might be affected by it, except that where rights or claims *bona fide* have intervened, amendments that would entirely defeat them have been in some instances denied." And he refers to Gibson v. Bailey, *supra*, as laying down the proper rule on the subject. In Scammon v. Scammon, 28 N. H. 419, 429, Bishop v. Cone, and Gibson v. Bailey, are again referred to with approval. In Cass v. Bellows, 31 N. H. 501, they also are approved, but the proper person to make the corrections then necessary was dead, and consequently they could not be made. See, further, Prescott v. Hawkins, 12 N. H. 19; Pierce v. Richardson, 37 N. H. 306, 309; Jaquith v. Putney, 48 N. H. 138; Davis v. Sawyer, 66 N. H. 34. It is held in Maine that in a suit to recover a tax paid by plaintiff as illegally assessed because the assessors did not appear to have been sworn, parol evidence is admissible to show that the proper oath was administered, and the court can permit the record of the town clerk to be amended accordingly under the statute allowing errors in such records to be amended on oath, according to the fact, by the officer who

that "it has never been held that such amendments could be allowed by any other tribunal than one of the superior courts."¹ And yet unless some statute confers upon them the authority, it is not very clear whence they derive it, nor how a township officer, or one who has been such, can, in this collateral way, have authority conferred upon him to do anything which, without such authorization, would be an illegal act.²

An early case in Massachusetts, often quoted in New Hampshire, involved the validity of a correction by a town clerk, of his own motion, to cure a defect in an entry made by himself. The amendment was sustained; the court expressing the opinion that the clerk might have made it at any time while he held the office, even though under a subsequent election.³ But it is held in the same state that the successor of the clerk can have no authority to make corrections in records of transactions which were had before he came into office.⁴

In Vermont it has been said that "the practice of amending and altering the records, when a controversy has arisen, to meet a particular case, or in consequence of a decision of the court, cannot be defended."⁵ In a later case the right to amend, under proper restrictions, was asserted. "While it is obvious," say the court, "some limits must be fixed to such amendments, we do not feel prepared to say, as matter of law, that they are never allowable. If the officer making the record were out of office, or were a party to the suit, as in *Hadley v. Chamberlin*, 11 Vt. 618, and in many other cases, it might be improper. . . . But we think in general it must be regarded as the right of the clerk of a town, or other municipal corporation, while having the custody of the records, to make any record according to the facts. And we do not perceive that his having been out of office, and restored again, could

should have made them correctly: *Whiting v. Ellsworth*, 85 Me. 301.

¹ *Pierce v. Richardson*, 37 N. H. 306, 311; *Roberts v. Holmes*, 54 N. H. 560.

² *Boody v. Watson*, 64 N. H. 162.

³ *Welles v. Battelle*, 11 Mass. 477, 481.

⁴ *Taylor v. Henry*, 2 Pick. 397. The defect consisted in the failure to record the adjournment of the town

meeting at which the new clerk was chosen.

⁵ *Williams*, Ch. J., in *Hadley v. Chamberlin*, 11 Vt. 618. The amendment was made in open court on the trial of a cause involving the sufficiency of the record. One peculiarity of the case was that the officer making the amendment was a party to the suit, and made it for his own protection.

deprive him of that right. But even the officer could not alter or amend a record upon the testimony of third persons, ordinarily, and ought not to do it upon his own recollection, unless in very obvious cases of omission or error, of which the present might fairly be regarded as one, probably. Such amendments should ordinarily be made by the original documents or minutes.”¹

It is observable of this case that the amendment, which consisted in the signing of the record of warning of a school district meeting, was made by the clerk on the trial of a cause, where the record was in question, and without the permission of the court. From the case it appears that “the court decided that they had no power over the clerk, and could give him no directions, but said that in the opinion of the court the clerk had a right, if he chose to do so, to amend the record in that particular, if such amendment would be according to the truth; but that the clerk must judge for himself whether he would or should make such amendment; and the court added that if such amendment was made, the record, in the opinion of the court, would be admissible.” This remark distinguishes the case broadly from those in New Hampshire, and leaves the responsibility of all amendments with the officer himself.

In New York, in a case in which the affidavit of the assessors, attached to the assessment roll, was found to be defective, the opinion was expressed that it would be competent for the board of supervisors, when in session for the purposes of a review of the rolls, “to send for the assessors of any one town to come before them, and supply omissions and make the necessary affidavits where the omission occurred through accident or mistake.”² This opinion appears entirely reasonable; and it would seem that the officer who, through any carelessness or error, has executed, or even delivered, a defective process or return, ought to be at liberty to correct it at any time afterwards, before any decisive action has been taken, under the process or document amended, and while, therefore, there is no possibility that the error can have prejudiced any one.

Of course the amendment could not be made by one who was no longer in office, as under such circumstances it would

¹ *Redfield*, Ch. J., in *Mott v. Reynolds*, 27 Vt. 206, 208.

² *Parish v. Golden*, 35 N. Y. 462, 465, per *Morgan*, J.

not be an official act.¹ Neither could it be made under circumstances where it could operate unjustly upon the rights of parties. Thus it has been held in Vermont that if a tax sale is fatally defective by reason of the failure of the town clerk to certify in his record that the advertisements were published as required by law, the clerk cannot make it good by amending his record after the time for redeeming from the sale has expired. The reason is, that the owner, relying upon the record, may have omitted to redeem, inasmuch as his land has not been legally sold.² But until the rights of third parties have intervened, or conclusive action has been taken in reliance upon the records or documents, as representing in their imperfect

¹ *Shaw*, Ch. J., in *Hartwell v. Littleton*, 13 Pick. 229, 232. "The first question is whether the town clerk of a former year, who does not now hold that office, can be allowed to come in and amend the record of a former year, made whilst he was in that office; and the court are of opinion that he cannot. It has been held in *Welles v. Battelle*, 11 Mass. 477, that where a clerk continues in office several years, by repeated annual elections, he may amend the record of a former year, notwithstanding an election has intervened, and though he does not hold the office under the same appointment. But we think there is an obvious distinction in principle between the two cases. In the latter the clerk not only knows the fact in relation to which the amendment is to be made, which is a circumstance common to both, but he still enjoys the confidence of the town, is by their vote intrusted with the custody of their records, and is held responsible for their purity and correctness under the sanction of his official oath, and all such other guards as the law has thought it necessary to prescribe in the case of a clerk actually in office. The intervening election is substantially a continuance of the clerk in the same office." And see *School*

District v. Atherton, 12 Met. 105. For a case where a deputy county clerk was permitted to amend the record by affixing his signature which he had omitted during his term of office as county clerk, see *Sheldon v. Marion T'p*, 101 Mich. 256. In Missouri it has been held that a special tax-bill may be amended to correct the name of the owner of land, by the officer who issued it, though out of office: *Stadler v. Roth*, 59 Mo. 400; *Kiley v. Cranor*, 51 Mo. 541. And a defective return of a clerk's statement of a tax levy may be amended by the officer who made the return, even after the expiration of his term of office; and the same is true of his statement: *Morrison v. St. Louis, I. M. & S. R. Co.*, 96 Mo. 602. But where the assessor's book has not been authenticated by his affidavit, the court, in a suit for delinquent taxes, has not power to authorize the ex-assessor to make and subscribe in the books such an affidavit as he should originally have made: *State v. Phillips*, 102 Mo. 664.

² *Jeudevine v. Jackson*, 18 Vt. 470. approved and followed in *Langdon v. Poor*, 20 Vt. 13. Compare *Jaquith v. Putney*, 48 N. H. 138. And see *McGrath v. Wallace*, 116 Cal. 548; *French v. Edwards*, 5 Sawy. 266.

state the actual facts, it is not perceived why a mistake once made should be crystallized and preserved as an instrument for the destruction of all that shall follow, instead of being corrected, that legal proceedings may be supported upon it. The question to some extent is one of public policy; and while undoubtedly it is wise to hold strictly to the rule that records shall not be tampered with to the injury of parties concerned, there is no principle or reason of public policy which should preclude the correction of errors before rights have become fixed, but many considerations which support it.

No amendment can make valid a tax-sale that was void for want of a proper description of the land in the assessment and subsequent proceedings.¹ And if fatal errors occur in tax conveyances, they can neither be amended by the officer, nor corrected by motion in a court of law.² The proper tribunal for that purpose is a court of equity. A court of law, where the defective conveyance was in question, might order the case continued to give opportunity for relief in equity, but could not do more.³

An officer to whom return has been made by another has no authority to amend such return,⁴ but a correction in an immaterial point can give no one a ground of complaint.⁵

¹ Roberts v. Chan Tin Pen, 23 Cal. 259.

² For attempts to correct by officers years after the sale, see French v. Edwards, 5 Sawy. 266; McGrath v. Wallace, 116 Cal. 548. An unauthorized alteration of a special bill does not destroy it, but deprives it of its character of *prima facie* evidence: Kefferstein v. Knox, 56 Mo. 186.

³ Annan v. Baker, 49 N. H. 161, 171, citing Prescott v. Hawkins, 12 N. H. 19.

⁴ Blight v. Banks, 6 T. B. Monr. 192, 206; Blight v. Atwell, 7 T. B. Monr. 264, 268. See Bellows v. Weeks, 41 Vt. 590, 600; Jones v. Tiffin, 24 Iowa 190.

⁵ Case v. Dean, 16 Mich. 12.

CHAPTER XI.

THE LEGISLATIVE DETERMINATION THAT A TAX SHALL BE LAID.

Necessity for legislation. The power to tax being legislative, there must be distinct authority of law for every levy upon the people under that power.¹ The authority may come from the constitution, which, in exceptional cases, will provide for the levy of a specific tax,² or for a tax for some defined purpose; but in general the authority will come from the legislature, and must be expressed in statutory form. The rule is one which applies to federal taxation and to taxation in every state in all its phases, whether it be taxation for state purposes and directly by the state itself, or taxation for municipal purposes and by municipal bodies, or taxation in the form of local assessments.³ And in the case of local taxation there must

¹ Webster v. People, 98 Ill. 343; Hopkins v. People, 174 Ill. 416; Greenwood v. Gmelich, 175 Ill. 526; State Board v. Holliday, 150 Ind. 216; Phelps v. Lodge, 60 Kan. 122; Cotton Exchange v. Assessors, 35 La. An. 1154; Stetson v. Kempton, 13 Mass. 272; Auditor-General v. Duluth, S. S. & A. R. Co., 116 Mich. 122; Cruikshanks v. Charleston, 1 McCord 360; State v. Hagood, 13 S. C. 76; Mining Co. v. Juab County (Utah), 62 Pac. Rep. 1024; Virginia, etc. R. Co. v. Washington County, 30 Grat. 471; Felton v. Hamilton County, 97 Fed. Rep. 823. A tax is deemed illegal where there is no law to authorize its levy, or where, there being such law, that law is unconstitutional: State v. Fifth Circuit Judges, 37 La. An. 898. A tax referable to a law which will support it will not be referred to one which would make it void: Lima v. McBride, 34 Ohio St. 338.

² Poll-tax levied by the constitution itself: State v. Cain, 52 La. An. 2120.

³ See Heine v. Levee Com'rs, 19 Wall. 660; State Railroad Tax Cases, 92 U. S. 575; Lott v. Ross, 38 Ala. 156; Norris v. Russel, 5 Cal. 248; Vanover v. Justices, 27 Ga. 354; Allen v. Peoria, etc. R. Co., 44 Ill. 85; Bright v. McCullough, 27 Ind. 223; Bullock v. Curry, 2 Met. (Ky.) 171; Bangs v. Snow, 1 Mass. 181; Daily v. Swope, 47 Miss. 367; Lisbon v. Bath, 21 N. H. 219; Litchfield v. Vernon, 41 N. Y. 123; Simmons v. Wilson, 66 N. C. 336; Columbia v. Guest, 3 Head 413; State v. Charleston, 2 Speers 623; Richmond v. Daniel, 14 Grat. 385. "There can be no taxation except as authorized by statute or constitution:" Chicago, M. & St. P. R. Co. v. Phillips, 111 Iowa 377. "The levy of taxes is not a judicial function. Its exercise, by the constitutions of all the states, and by the theory of our English origin, is exclusively legislative:" Heine v. Levee Com'rs, 19 Wall. 660; State Railroad Tax Cases, 92 U. S. 575. The judiciary has no power to levy taxes,

commonly be two distinct acts of legislation: first, that by the state giving the power to tax, and second, that by the local legislative or *quasi*-legislative authority, laying the tax under the power so given.

The term "levy" will be used in this chapter as meaning the legislative act, whether state or local, which determines that a tax shall be laid.¹

A legislative act for the levy of a tax, as much as in any other case, must be passed under the restrictions of the constitution, or it can have no validity.² Therefore, when the constitution requires an act to have but one object, which shall be expressed in the title, the requirement must be complied with.³

or to collect taxes when the officer appointed to collect refuses to do so: *McLean County Precinct v. Deposit Bank*, 81 Ky. 254. It is not one of the inherent functions of a court of justice to participate in any way in the levy of a tax; such power is usually lodged in administrative officers and boards: *Wells County v. McHenry*, 7 N. D. 246. Courts will not resort to extra-legislative modes of levying or collecting taxes, except in cases where, for the purpose of administering justice, they have interfered with the operation of the legislative scheme: *State v. State Board*, 54 N. J. L. 90. A writ of prohibition will not lie, on the petition of one city, to restrain the levy of taxes for the municipal purposes of another city, from which the former has been severed, since the levy of a tax is not a judicial act: *Coronado v. San Diego*, 97 Cal. 440.

¹ *Perry County v. Selma, etc. R. Co.*, 58 Ala. 546; *Maguire v. Board of Mobile*, 71 Ala. 401; *State v. McGinnis*, 26 La. An. 558. The term is often used to cover much more than the legislative act. Thus in *Moore v. Foote*, 32 Miss. 469, 479, it is said that "levy imports the ascertainment of the amount to be raised, and the performance of such acts as would authorize the collector to proceed to

collect." And see *Bradley v. Lincoln County*, 60 Wis. 71; *Sheldon v. Van Buskirk*, 2 N. Y. 473. On the other hand, the term to levy a tax is sometimes used in the sense "to collect:" *Waterman v. Harkness*, 2 Mo. App. 494; *Valle v. Fargo*, 1 Mo. App. 344. "Levy" of a special tax means to charge upon the person or property a sum of money already ascertained; an ordinance passed before the work is done, authorizing it to be done, is not such a levy. Nor is the city engineer's work in apportioning the cost of grading under a statute providing that a special tax may by ordinance be levied for such work: *Westport v. Mastin*, 62 Mo. App. 647. "The word 'levy' as applied to taxes sometimes means to raise, to exact by authority of government, to determine by vote the amount of tax to be raised. It is in this sense that towns, cities, and school districts levy taxes. In other cases it is used with reference to the mere ministerial or executive acts of extending them on the tax-books and collecting them:" *State v. Lakeside Land Co.*, 71 Minn. 283.

² Utah statute held void as lacking all the proper sanctions and securities of a valid tax-law: *Kerr v. Wooley*, 3 Utah 456.

³ *Cooley*, Const. Lim. (5th ed.) 170-

When the constitution provides that taxes of a certain kind shall be applied to a particular purpose or fund, a statute imposing such a tax will be invalid if it directs a different application.¹ And if local or special laws are forbidden by the constitution, they will be void in tax cases.²

181, and cases cited; *State v. Southern R. Co.*, 115 Ala. 250; *San Francisco, etc. R. Co. v. Board*, 60 Cal. 12; *Board of Com'rs v. Whelan* (Colo.), 65 Pac. Rep. 38; *Equitable G. & T. Co. v. Donahoe* (Del.), 49 Atl. Rep. 373; *Manchester v. People*, 178 Ill. 285; *West Chicago Park Com'rs v. Sweet*, 167 Ill. 326; *National Bank v. Barber*, 24 Kan. 534; *Board of Com'rs v. Mialegvich*, 52 La. An. 1292; *Ryerson v. Utley*, 16 Mich. 269; *People v. Denahy*, 20 Mich. 349; *Connecticut Mut. Ins. Co. v. State Treasurer*, 31 Mich. 6; *Anderson v. Hill*, 54 Mich. 478; *Wilcox v. Paddock*, 65 Mich. 23; *Sanilac Supervisors v. Auditor-General*, 68 Mich. 659; *Gillett v. McLaughlin*, 69 Mich. 547; *Tillotson v. Saginaw Circuit Judge*, 97 Mich. 585; *Auditor-General v. Bay Supervisors*, 106 Mich. 662; *State v. Bixman*, 162 Mo. 1; *State v. Aitken* (Neb.), 87 N. W. Rep. 153; *State v. Stone*, 24 Nev. 308; *Richards v. Hanmer*, 42 N. J. L. 435; *Burnett v. Dean* (N. J.), 49 Atl. Rep. 503; *People v. Home Ins. Co.*, 92 N. Y. 328; *Divet v. Richland County*, 8 N. D. 65; *Singer Mfg. Co. v. Graham*, 8 Or. 17; *Carroll v. Alsup* (Tenn.), 64 S. W. Rep. 193; *International, etc. R. Co. v. Smith County*, 54 Tex. 1; *Morgan v. Commonwealth*, 98 Va. 812; *State v. Whittlesey*, 17 Wash. 447; *Merritt v. Corey*, 22 Wash. 444; *Travelers' Ins. Co. v. Oswego T'p.*, 59 Fed. Rep. 78, 7 C. C. A. 669; *Omaha v. Union Pac. R. Co.*, 73 Fed. Rep. 1013, 20 C. C. A. 219.

¹ *Chambe v. Wayne Probate Judge*, 100 Mich. 112. See *Hammond v. Muskegon School Board*, 109 Mich. 676. A statute providing that the collateral inheritance tax shall be

used for educational purposes is not an appropriation of money within constitutional provisions requiring appropriations to be made for certain specific subjects in a certain prescribed order, and forbidding appropriations for a period more than two years after the passing of the appropriation act: *State v. Henderson*, 160 Mo. 190. A tax-levy by the county court to build a court-house was held an appropriation for that purpose within the constitutional provision that no money shall be paid out of the treasury until it shall be appropriated. The money arising from the collection of the tax became an appropriation by law for the purpose for which it was levied: *Durrett v. Buxton*, 63 Ark. 397.

² A statute making unsecured taxes collectible when assessed, and secured taxes collectible several months later, is not a "special law for the assessment or collection of taxes" prohibited by the state constitution: *Rode v. Siebe*, 119 Cal. 518. A statute providing for taxing railroad property for county purposes at the regular rate *ad valorem* which is levied by the county authorities on other property, each county through which a road runs being allowed to tax at that rate all the company's property located in that county, and, in addition thereto, a proportion of the rolling stock and other floating property corresponding to the ratio between the company's property located in the county and the aggregate of its located property in all the counties through which the road runs, is a general law, and does not violate the constitutional provision

Revenue bills: Statement of purpose. It is provided in the constitution of New York that "every law which imposes, continues, or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient

against taxation under special laws: Columbus S. R. Co. v. Wright, 89 Ga. 574. A statute authorizing a certain county to levy a tax to pay for any turnpike it may buy is amended by the general law providing how all taxes may be levied and collected, and therefore does not infringe the constitutional inhibition of the levy and collection of taxes save by general laws: O'Mahoney v. Bullock, 97 Ky. 774. A statute authorizing a higher rate of taxation for road improvements in all counties where the assessed valuation of property is \$15,000,000 or over, and having more than 150 miles of macadamized and gravel roads, is not objectionable as being special because, when passed, there existed only one county to which it was applicable; the classification is proper: State v. Arnold, 136 Mo. 446. Nor is a law special which, designating subjects of taxation, designates one or more classes only; as, for example, one or more kinds of business or of corporations: State v. St. Louis, etc. R. Co., 9 Mo. Ap. 532. A law is not local which provides generally for local government or local taxation: Van Riper v. North Plainfield, 43 N. J. L. 349; State v. Franklin Co., 35 Ohio St. 458. Legislation for cities as a class is valid and constitutional, and is not local or special: Flock v. Smith (N. J.), 47 Atl. Rep. 442. Statutory provisions that assessments for improvements under them shall be levied and collected in conformity with existing laws in force in the city where the improvements are made, are not unconstitutional as provisions of special or local character embraced in a general act: State v. Newark, 48 N. J. L. 101, 49

N. J. L. 239. A statute providing for the acquirement of a certain bridge and ferry on behalf of and at the expense of a certain city, and requiring a tax to be levied to meet the expenses of maintenance and interest on the bonds, does not contravene the constitutional clause which forbids any special or local laws "for the assessment and collection of taxes:" Simon v. Northup, 27 Or. 487. An act applicable to all railroad companies "not paying an *ad valorem* tax is not special legislation, though there are but two such companies: Knoxville & O. R. Co. v. Harris, 99 Tenn. 684. A constitutional provision that a special tax cannot be levied in any of the common-school districts does not avoid a statute providing for a special tax in a high-school district: People v. Lodi High-School Dist., 124 Cal. 694. A statute providing that in counties of 125,000 inhabitants or more where the aggregate of tax levies certified to the county clerk exceeds five per cent. of the valuation of the taxable property therein it shall be reduced to five per cent., violates the constitutional prohibition of local or special laws regulating the affairs of any city, town, or village, since it imposes arbitrary restrictions on the only county in the state having such number of inhabitants: People v. Knopf, 183 Ill. 410; Knopf v. People, 185 Ill. 20. An act authorizing the relocation of a county seat, and requiring, in order to provide funds to erect a court-house and jail, the levy and collection of a special tax on all taxable property in the township to which the county seat should be transferred, is a local or special law under

to refer to any other law to fix such a tax or object." There are similar provisions in the constitutions of other states. Where they do not exist it is doubtless competent for a state to levy taxes generally without in the revenue bill giving any specification of object, and, when the taxes are collected, to appropriate them to any purpose which falls within the comprehension of public objects for the purposes of state care.¹ And the state may authorize a municipal corporation to levy

which a tax for a state, county, township, or road purpose cannot constitutionally be imposed: *Board of Com'rs v. State*, 155 Ind. 604. A statute which excepts organized counties from the general law as to taxation, and which substitutes limitations applicable to such counties only, is special legislation: *State v. Walker* (Minn.), 86 N. W. Rep. 104. Where the constitution prohibits local or special laws concerning liens and judicial sales, an act providing for the levy and collection of, and sales for, taxes in cities of the second class is void: *Safe Deposit & T. Co. v. Fricke*, 152 Pa. St. 231. An act to cure defects in a particular local levy of taxes is void where local laws are forbidden: *Kimball v. Rosendale*, 42 Wis. 407. The provision of the Wisconsin constitution forbidding the enactment of special laws "for the assessment or collection of taxes," extends to all the proceedings necessary to raise money by taxes, and prohibits a statute restricting the amount to be raised and expended in any one year by a county and its towns: *Chicago & N. W. R. Co. v. Forest County*, 95 Wis. 80. So also it prohibits a law which repeals a special law providing for the drainage of lands, and which authorizes the levy of a tax to pay expenses incurred by drainage commissioners under it: *State v. Bell*, 91 Wis. 271. Laws specially taking away remedies in tax cases are void when special laws are forbidden: *State v. California Mining*

Co., 15 Nev. 234, 16 Nev. 449; *State v. Consolidated Mining Co.*, 16 Nev. 432. And further as to what are local or special laws in tax cases, see *Railway Co. v. Cheyenne*, 113 U. S. 516; *Dundee Mortg. T. Inv. Co. v. Parrish*, 24 Fed. Rep. 197; *People v. Central Pac. R. Co.*, 83 Cal. 393, 105 Cal. 576; *People v. Lodi High-School Dist.*, 124 Cal. 694; *Ferris v. Vannier*, 6 Dak. 186; *People v. Cooper*, 83 Ill. 585; *People v. Cook County Com'rs*, 176 Ill. 576; *Commonwealth v. Taylor*, 101 Ky. 325; *Louisville & J. Ferry Co. v. Commonwealth* (Ky.), 47 S. W. Rep. 877; *Board of Council v. Renfro* (Ky.), 58 S. W. Rep. 795; *Board of Education v. Louisville, H. & St. L. R. Co.* (Ky.), 62 S. W. Rep. 1125; *State v. Flower*, 49 La. An. 1199; *Brown v. Pontchartrain Land Co.*, 49 La. An. 1779; *State v. Aitken* (Neb.), 87 N. W. Rep. 153; *McArdle v. Jersey City* (N. J.), 49 Atl. Rep. 1013; *Matter of Elevated R. Co.*, 70 N. Y. 327; *Matter of Church*, 92 N. Y. 1; *Gay v. Thomas*, 5 Okl. 1; *Crawford v. Linn County*, 11 Or. 482; *Commonwealth v. Macferron*, 152 Pa. St. 244; *Commonwealth v. Anderson*, 178 Pa. St. 171; *Blankenburg v. Black* (Pa.), 50 Atl. Rep. 198; *Burnett v. Maloney*, 97 Tenn. 699; *Zickler v. Union Bank & T. Co.*, 104 Tenn. 277. In Kansas special laws authorizing the levy and collection of taxes are not forbidden: *Midland Elevator Co. v. Stewart*, 50 Kan. 378.

¹ *Long v. Richmond Com'rs*, 76 N. C. 273.

taxes in the same general way; the just presumption being in such case that the moneys, when raised, will be lawfully appropriated.¹ Provisions like the one recited may nevertheless prevent some abuses, and considerable importance has been attached to them. But the purposes of government are so infinite in variety that the specification must for the most part be very general, or the constitution could not be complied with; and in New York it has been held that a statement in a tax law, that the money to be raised is to be paid into the treasury to the credit of the general fund, is a sufficient compliance with the requirement.² The same ruling was made where the statement was that the moneys raised should be applicable to the payment of the ordinary and current expenses of the state,³ and also where an act in taxing a railroad appropriated part of the taxes to the payment of the bonds issued in aid of the road.⁴ The provision applies only to annually recurring taxes, and taxes imposed generally upon the entire property of the state,⁵ and is not applicable to succession taxes upon legacies,⁶ or to local county taxes,⁷ or to laws authorizing the citizens of towns to impose taxes for bounties,⁸ or to statutes authorizing special local assessments.⁹ It is not violated by a provision in a law for taxing foreign insurance companies which grades the tax with reference to that which is or may be imposed at the place of their domicile upon New York insurance companies,¹⁰ or by an act which creates a board of estimate and apportionment, and authorizes the supervisors to cause the amount certified to them by such board to be raised by taxa-

¹ *Halsey v. People*, 84 Ill. 89. It will not defeat a tax that one of the items of levy for general county purposes was stated to be for "miscellaneous expenses." *Wells County v. McHenry*, 7 N. D. 246.

² *People v. Orange Supervisors*, 17 N. Y. 235; *Attorney-General v. Myers*, 58 Hun 218.

³ *People v. Home Ins. Co.*, 92 N. Y. 328; *People v. National F. Ins. Co.*, 27 Hun 188.

⁴ *Bridges v. Sullivan Supervisors*, 92 N. Y. 570; *Clark v. Sheldon*, 106 N. Y. 104; *Strough v. Supervisors*, 119 N. Y. 212.

⁵ *Matter of McPherson*, 104 N. Y. 306; *Jones v. Chamberlain*, 109 N. Y. 100.

⁶ *Matter of McPherson*, 104 N. Y. 306; *Union Trust Co. v. Wayne Probate Judge*, 125 Mich. 587.

⁷ *Jones v. Chamberlain*, 109 N. Y. 100.

⁸ *Jones v. Chamberlain*, 109 N. Y. 100.

⁹ *Ford's Petition*, 6 Lans. 92; *Guest v. Brooklyn*, 8 Hun 97. See *People v. Havemeyer*, 47 How. Pr. 494.

¹⁰ *People v. Fire Assoc.*, 92 N. Y. 311.

tion.¹ But a law does not distinctly state the tax imposed where it provides for a tax of three and a half mills on the dollar of valuation "or so much thereof as may be necessary;" nor does it comply with the constitution when it refers to another law for the specification of the object.² It is not, however, of importance that laws imposing on counties the duty of selling for delinquent state taxes and charging them with unpaid taxes do not state the objects to which the taxes are to be applied, for such laws do not impose, continue, or revive a tax within the meaning of those words as used in the constitution.³ Cases which have been decided under analogous constitutional provisions in other states are cited in the margin.⁴

It is sometimes a serious question whether a constitutional provision is so far complete and specific in itself as to constitute a sufficient law without assistance from legislation. If it is, it must be considered mandatory and self-executing, and effect must be given to it accordingly.⁵ If it is not, it simply lays its mandate upon the legislature, and will fail of effect if

¹ *Townsend v. New York*, 16 Hun 362.

² *People v. Kings County Supervisors*, 52 N. Y. 556.

³ *People v. Ulster County Supervisors*, 36 Hun 491.

⁴ *Albany Bottling Co. v. Watson*, 103 Ga. 503; *Youngerman v. Murphy*, 107 Iowa 686; *Burch v. Owensboro* (Ky.), 36 S. W. Rep. 12; *Cahill v. Perrine* (Ky.), 49 S. W. Rep. 344; *Somerset v. Somerset Banking Co.* (Ky.), 60 S. W. Rep. 5; *Trowbridge v. Detroit*, 99 Mich. 443; *Pingree v. Auditor-General*, 120 Mich. 95; *Parker v. Wayne County*, 104 N. C. 166; *Pittsburgh, C. & St. L. R. Co. v. State*, 49 Ohio St. 189; *Southern R. Co. v. Kay* (S. C.), 39 S. E. Rep. 785; *Commonwealth v. Brown*, 91 Va. 762; *Morgan v. Commonwealth*, 98 Va. 812; *Mason v. Purdy*, 11 Wash. 591. See *Chambe v. Wayne Probate Judge*, 100 Mich. 112. The constitution of Florida requires county taxes for the support of free public schools to be specifically levied for that purpose,

differentiated from a levy for other county purposes: *State v. L'Engle*, 40 Fla. 392.

⁵ See *Cooley*, Const. Lim. (5th ed.) 98-102. A provision that the legislature shall levy a capitation tax equal per poll to the tax on \$300 of property was held not to be self-executing; but it avoided a statute fixing the capitation tax at \$1.29 per poll, and the property tax at 46 cents per \$100: *Russell v. Ayer*, 120 N. C. 180. Legislation is necessary to render effective the provision of the Colorado constitution providing for the taxation of mining claims: *Matter of Taxation*, 9 Colo. 622. A constitutional provision that the net annual product of mines and mining claims should "be taxable as provided by law" was held not self-executing, inasmuch as it furnished no rule for its own enforcement, and required legislative action to give effect to the purposes contemplated: *Mercur, etc. Co. v. Spry*, 16 Utah 222.

that body neglect to pass the necessary laws to carry out the will of the people expressed in it.¹ In the case of provisions like the one referred to, there is no doubt of their mandatory and self-executing character. They require conformity to their directions in all legislation of a certain class, and if obedience to the requirement does not appear, the legislation is void.² But they have no application to a case in which the constitution itself makes an appropriation of tax moneys, and the legislature merely gives effect to the provision for the purpose.³

Contracting debts. The incurring of a debt by a public corporation is, in a certain sense, the first step in taxation, since debts by such corporations are commonly only to be paid by taxation.⁴ Every state has inherent power to contract debts, subject only to such restraints as the people by the constitution may have imposed;⁵ but any officer assuming to pledge the credit of the state must have authority of law for the purpose. Sometimes the extent of indebtedness is restricted in amount,⁶ and any attempt to increase it beyond the restriction would be *ultra vires*. Sometimes the restriction is that a law for the creation of a debt shall only take effect after approval by the people by popular vote. Sometimes it is merely that the law for the purpose shall be passed by two-

¹ State Board v. Holliday, 150 Ind. 216.

² People v. Supervisors, 52 N. Y. 556; Dean v. Lufkin, 54 Tex. 266.

³ Walcott v. People, 17 Mich. 68.

⁴ When statutes without using qualifying words authorize municipalities to "raise" money for public necessities, they mean that money is to be raised by taxation and not by borrowing: Dickinson Supervisors v. Warren, 98 Mich. 146; Schneewind v. Niles, 103 Mich. 301; Wells v. Salina, 119 N. Y. 280. And authority to a county to levy a tax for county buildings will not authorize the issue of bonds for the purpose: Shawnee County v. Carter, 2 Kan. 115.

⁵ Harris v. Dubuclet, 30 La. 662.

⁶ See Atlantic Trust Co. v. Darling-

ton, 63 Fed. Rep. 76; Culbertson v. Fulton, 127 Ill. 30; Hodges v. Crowley, 186 Ill. 305; Chicago v. Fishbun, 189 Ill. 367; Lussem v. Sanitary Drainage Dist. (Ill.), 61 N. E. Rep. 544; Allen v. Davenport, 107 Iowa 90; State v. Atlantic City, 49 N. J. L. 558; State v. Tomahawk Common Council, 96 Wis. 73; Crogster v. Bayfield County, 99 Wis. 1; Herman v. Oconto (Wis.), 86 N. W. Rep. 681. The Illinois statute making a city liable for property which may be destroyed within it by a mob does not violate a constitutional provision that a municipality shall not be allowed to become indebted beyond five per cent. of its taxable property: Chicago v. Manhattan Cement Co., 178 Ill. 372.

thirds vote; which means two-thirds of a quorum,¹ unless the constitution otherwise specifies.²

Municipalities have power to contract debts for strictly corporate purposes, and for no others, except as within the limits discussed in a preceding chapter³ they may be authorized by legislation to go further. But, even for the customary purposes, the power may be restrained by constitutional provision, or by legislation. The implied power to levy taxes for the payment of authorized debts has already been considered.⁴

Provision is sometimes made for a regular annual levy for a "sinking fund," which is a fund set apart to meet the requirement of some regular loan for which public obligations are issued; and it can neither be raised for, nor devoted to, floating indebtedness.⁵ A constitutional provision that "it shall be the duty of the legislature to provide by law, in all cases where a state or county debt is created, adequate means for payment of current interest, and two per cent. as a sinking fund for the redemption of the principal," does not preclude the creation of a debt payable in ten years, the requirement of the sinking fund being only designed to make certain the payment within fifty years.⁶ Bonds are not void because no provision was made in the ordinances under which they were issued for the levy of a tax to pay interest on them for the year in which the ordinances were passed, since no interest fell due that year.⁷

Municipal taxation. The municipal corporations of a state having no inherent power to tax must take such power as is

¹ Cass County v. Johnston, 95 U. S. 630; Southworth v. Palmyra, etc. R. Co., 2 Mich. 287; State v. McBride, 4 Mo. 303; Morton v. Controller, 4 S. C. 430; Bond Debt Cases, 12 S. C. 200. In Michigan where a city is incorporated under the general law, any resolution or ordinance of its common council incurring a liability that must be met by taxation requires a concurring two-thirds vote of all the aldermen elect: Tennant v. Crocker, 85 Mich. 328.

² Where the requirement is a majority vote of all the members *elected*, all are to be counted though one is

ineligible: Satterlee v. San Francisco, 23 Cal. 314.

³ See ch. IV.

⁴ *Ante*, p. 467.

⁵ Union Pac. R. Co. v. Buffalo County, 9 Neb. 449; Union Pac. R. Co. v. York County, 10 Neb. 612; Union Pac. R. Co. v. Dawson County, 12 Neb. 264.

⁶ Bagley v. Bateman, 50 Tex. 446.

⁷ Lussem v. Sanitary Drainage Dist. (Ill.), 61 N. E. Rep. 544. As to the appropriation of surplus revenues to pay previous debts, see State v. State Auditor, 32 La. An. 89.

conferred under the conditions and limitations that may be prescribed, and only for such purposes as may be expressed. This is fundamental.¹ The authority is not only a delegated authority conferred by the state, but it is to be assumed that the state has given all it intended should be exercised,² and the grant, like that of all special and limited grants, is to be strictly pursued.³ Express power to levy particular taxes is a negation

¹ *Phoenix Carpet Co. v. State*, 118 Ala. 143; *Vance v. Little Rock*, 30 Ark. 435; *Basnett v. Jacksonville*, 19 Fla. 664; *Alton v. Insurance Co.*, 82 Ill. 45; *Drummer v. Cox*, 165 Ill. 648; *Piaquemines v. Roth*, 29 La. An. 261; *Shreveport v. Prescott*, 51 La. An. 1895; *New Iberia v. Weeks*, 104 La. 489; *Baltimore & E. S. R. Co. v. Spring*, 80 Md. 510; *Corbett v. Portland*, 31 Or. 407; *State v. Talley*, 50 S. C. 374; *Jodon v. Brenham*, 57 Tex. 655; *Corpus Christi v. Woessner*, 58 Tex. 462; *Felton v. Hamilton County*, 97 Fed. Rep. 823, 38 C. C. A. 432. A power to tax for street lighting cannot be exercised for street improvement: *Webster v. People*, 98 Ill. 343; see *Murphy v. Jacksonville*, 18 Fla. 318. Where county supervisors without authority vote the sheriff a salary in lieu of all statutory fees for services, and include such salary in the yearly tax-levy, the tax is void: *Hewitt v. White*, 78 Mich. 117. Including salaries of town officers in the tax levy of an incorporated village renders the tax illegal and avoids a sale under a judgment for non-payment of such tax: *Gage v. Goudy*, 141 Ill. 215, following *Drake v. Ogden*, 128 Ill. 603. The issue of anticipation warrants by a county against a tax levied for future years, based on an assessment of the year preceding the one in which the levy was made, held unauthorized: *Hodges v. Crowley*, 186 Ill. 305. A tax-levy within the constitutional limit for the payment of current expenses is not void because the intention is to

pay it to persons with whom the city has a void contract for lighting the city: *Mayfield Woolen Mills v. Mayfield (Ky.)*, 61 S. W. Rep. 43. A tax authorized by statute for the construction or purchase of water-works may be levied before a contract of purchase or construction is entered into or approved by the electors: *Youngerman v. Murphy*, 107 Iowa 686. The trustees of a school-district may, immediately upon condemning an old school-house, levy a tax to be applied in building a new one, without waiting until the interested citizens may appeal from the superintendent's action: *Fremd v. Deposit Bank (Ky.)*, 42 S. W. Rep. 102. A tax levied by a city in part for a lawful and in part for an unlawful purpose, but within the legal limits of the city's power to levy, is not necessarily void *in toto*: *Nalle v. Austin*, 91 Tex. 424.

² *State v. Brewer*, 64 Ala. 287.

³ *Montgomery v. State*, 38 Ala. 162; *Smith v. Davis*, 30 Cal. 536; *Taylor v. Downer*, 31 Cal. 480; *Smith v. Cofran*, 34 Cal. 310; *Tucker v. Justices*, 34 Ga. 370; *Bramwell v. Guheen*, 2 Idaho 1069; *Chicago v. Wright*, 32 Ill. 192; *Scammon v. Chicago*, 40 Ill. 46; *Mix v. People*, 72 Ill. 241; *People v. Lee*, 112 Ill. 113; *People v. Chicago, B. & Q. R. Co.*, 164 Ill. 506; *Kyle v. Malin*, 8 Ind. 34; *State v. Davenport*, 12 Iowa 335; *Mullins v. Andrews (Ky.)*, 45 S. W. Rep. 232; *Municipality v. Millandon*, 12 La. An. 769; *Constant v. East Carroll*, 105 La. 286; *Henderson v.*

of the power to lay others; and, if particular subjects of taxation are enumerated, the corporation cannot reach out to tax others.¹ A county board of supervisors does not obtain the power to tax under a constitutional provision that it shall "fix the county levies for the ensuing year, and apportion the same among the various townships;" but the provision contemplates

Baltimore, 8 Md. 352; *Loose v. Navarre*, 95 Mich. 603; *McComb v. Bell*, 2 Minn. 295; *St. Joseph v. Anthony*, 30 Mo. 537; *Westport v. Mastin*, 62 Mo. App. 647; *State v. Jersey City*, 26 N. J. L. 444; *Sharp v. Johnson*, 4 Hill 92; *Doughty v. Hope*, 3 Denio 594; *Tallman v. White*, 2 N. Y. 66; *Howell v. Buffalo*, 15 N. Y. 512; *Bennett v. Buffalo*, 17 N. Y. 383; *Cruger v. Dougherty*, 43 N. Y. 107; *In re Truffer*, 44 Barb. 46; *Squire v. Cartwright*, 67 Hun 218; *Irvin v. Gill*, 155 Pa. St. 8; *Mercur, etc. Co. v. Spry*, 16 Utah 222; *Richmond v. Richmond, etc. R. Co.*, 21 Grat. 604. Under a statute directing that no drain tax shall be spread on the assessment rolls unless directed by the board of supervisors, a supervisor is not authorized to spread such tax unless so directed: *Post v. Harris*, 95 Mich. 321. Under a statute providing that town authorities shall annually, on or before a certain day, certify to the county clerk the amount they require to be raised by taxation, a tax-levy based on a certificate filed after that date is void: *Gage v. Nichols*, 135 Ill. 128. A provision of a city charter that the common council shall, on or before a named date, levy the taxes on all property in the city sufficient to raise revenue to carry on the different departments of the municipal government is peremptory, and a levy made after that date would be void: *Board of Education v. Common Council*, 128 Cal. 369, citing *People v. McCreery*, 34 Cal. 442. Where the state statutes prescribe a

certain time for the levying court to convene and levy taxes, a levy by it at any other time is invalid, though it may have convened and made the levy at such time under a *mandamus* from the federal court: *Martin v. McDiarmid*, 55 Ark. 213. Taxes to pay a judgment of the federal court, founded upon municipal bonds, can be levied only as provided by the statute, and an attempt by the county court to act outside of the law will be enjoined at the state's instance, even though the action of such court was induced by mandate from the federal court: *State v. Hager*, 91 Mo. 452. Under a statute providing that the city tax-levy shall be based on the annual appropriation bill for the year, a levy made prior to the adoption of the bill for that year is invalid: *Engstad v. Dinnie*, 8 N. D. 1. A sale for a mulct tax is void where the supervisors failed to levy such tax in view of a statute making the auditor's certificate of such levy the treasurer's authority for collecting the tax: *Smithberg v. Archer*, 108 Iowa 215. The power to levy taxes for town purposes being expressly given by statute to the electors at the annual town meeting, the board of town auditors has no authority to make such levy: *Hopkins v. People*, 174 Ill. 416.

¹ *Baldwin v. City Council*, 53 Ala. 437; *Indianapolis & V. R. Co. v. Capitol Paving, etc. Co.*, 24 Ind. App. 114. Authority to a municipality to levy a particular tax is not to be understood as enlarging by implication a

legislation to which it will be supplementary.¹ And the legislation will be expected not merely to originate the power to tax, but to prescribe all necessary rules and regulations to give it complete effect, except as the constitution may already have done so.

A municipal corporation or board does not lose its right to tax by failure for a time to exercise such right.² But if an alleged municipality — for example, a school district — never had any legal existence, it never had jurisdiction to levy a tax, and a special tax levied by it will be enjoined.³

Determination of amount. There cannot be an imposition of a tax without the amount or the rate being fixed. An undetermined tax is in law no tax. Therefore, a statute which simply provides that a local tax shall be paid on the franchise of a street railway company, or that every corporation shall pay a local tax on its franchises, is not a levy of a tax, it being left to the local authorities to levy such tax as they may deem necessary.⁴ And an act which divides merchandise into a number of classes pre-arranged into groups, and which prohibits any person, firm, or corporation from employing more than fifteen persons, or from selling any merchandise of one of the classes or groups without paying a license for each class, is void for uncertainty, there being nothing to show whether the fee is to be exacted for classes or for groups, and the duration of the license to be issued not being fixed.⁵

The amount of a tax need not, however, be prescribed by

previously existing legislation upon the whole subject of municipal levies: *Weber v. Traubel*, 95 Ill. 427.

¹ *Virginia, etc. R. Co. v. Washington County*, 30 Grat. 471. A constitutional provision that taxes for the subdivisions of the state shall be levied and collected by the respective fiscal authorities thereof, confers administrative powers in the collection of the tax without reference to its creation: *Southern R. Co. v. Kay* (S. C.), 39 S. E. Rep. 785.

² *Covington v. Covington Gas Light Co.*, 84 Ky. 94; *Chicago & A. R. Co. v. Baldrige*, 177 Ill. 229.

³ *Green Mountain S. R. Co. v. Savage*, 15 Mont. 189.

⁴ *South Covington & C. H. R. Co. v. Bellevue* (Ky.), 49 S. W. Rep. 23; *Paducah St. R. Co. v. McCracken County* (Ky.), 49 S. W. Rep. 178.

⁵ *State v. Ashbrook*, 154 Mo. 375. As to when a tax is "ascertained and levied," see *Wilson v. Becker*, 63 Minn. 61. An order of a county commissioners' court that there shall be levied on all occupations in the county, not specially provided for by the laws of the state, "a tax of one-half of the state occupation tax, as levied by the laws of the state," is a

statute, for if it is determinable by a mere act of computation, the ascertainment of it is ministerial or executive, and not legislative.¹ Thus, where the constitution required that every law creating a state debt should levy a tax annually sufficient to pay the annual interest of such debt, the requirement was complied with by a provision that "an annual tax, in addition to all other taxes, shall be levied upon the property of the state sufficient to pay the interest on the loan," etc., there being then in force a general law under which it became the duty of an executive officer to fix the amount of the tax and order its collection.² So it was held complied with in an act for borrowing money on state bonds, when the provision was that "the faith and credit of the state is hereby pledged for the payment of principal and interest on said bonds, and a sufficient amount of taxes is hereby levied to pay the interest accruing on said bonds annually."³

When a state auditing board is provided for by the constitution of the state, the allowances of the board will perhaps be made conclusive, and be required to go into the general tax-levy for the year.⁴ And in any case there seems to be no objection in principle to legislation under which the salaries of state officers, the general expenses of state government, the interest on state indebtedness, and other demands against the state, which are audited in accordance with general legislation, shall be provided for by a levy made under general rules without the necessity of a special act directing the amount or the rate of the particular tax. Of course the legislature may levy

sufficient levy of a tax upon the occupation of liquor-dealer, as a state statute taxes such occupation a specified sum: *Wade v. State*, 22 Tex. App. 629. A general county tax is not levied by the order of a commissioners' court that "the assessor be, and he is hereby, instructed to assess all taxes that he is authorized to assess for the county at one-half of the amount he assesses for the state, and the sheriff is hereby authorized to collect the same," etc.: *Dawson v. Ward*, 71 Tex. 72.

¹ *Morton v. Controller*, 4 S. C. 430.

See *Edwards v. People*, 88 Ill. 340; *Chicago & A. R. Co. v. Baldrige*, 177 Ill. 229.

² *Morton v. Controller*, 4 S. C. 430. *Mitchell County v. City Nat. Bank*, 91 Tex. 361.

³ *Morton v. Controller*, 4 S. C. 430.

⁴ See *People v. Supervisors*, 1 Hill 195. Where a statute provides for the levy of a tax to pay a judgment as soon as possible, a city officer cannot proceed to levy one unless otherwise authorized: *Iowa R. Land Co. v. Sac County*, 39 Iowa 124.

taxes by requiring a gross sum to be collected from the taxable property of the state as well as by fixing a rate per cent.;¹ and except as prohibited by the constitution the legislature may levy a tax without the intervention of any officer.²

It is not usual for the legislature to fix the precise amount of a local levy; nor is it indispensable that the amount should be determined by the local legislative body in all cases when not thus fixed, what was said above about the matter of computation being equally applicable here.³ While the methods provided by legislation for fixing the amount of local levies differ in different states, it can be said that in general the determination is left to local boards which are clothed for the purpose with a *quasi*-legislative authority. These boards for counties will perhaps be boards of supervisors or commissioners, or county courts, so called; for cities or boroughs, common councils; for villages, a village board; for townships, a township board or board of selectmen, and for other municipal corporations some corresponding board. All such bodies act by

¹ *State v. Bailey*, 56 Kan. 81. While it is the legislature's duty to provide no more than an amount of revenue sufficient to defray the necessary expenses of the state for the fiscal year, yet the legislative determination of the amount of taxes required for the year, and the rate necessary, is conclusive on the counties: *State v. Multnomah County*, 13 Or. 287.

² *Faust v. German Building Assoc.*, 84 Md. 186.

³ Under a statute authorizing villages to raise by general tax sums not exceeding a certain rate per cent. for the several sums specified, it is sufficient for the council in levying the tax to specify the rate per cent. for each fund, and it need not state the sums to be raised: *Boyce v. Peterson*, 84 Mich. 490. But where the statute provides that the village council shall fix the specific amounts of corporate taxes, and that subsequently the county authorities shall fix the rate per cent. thereof according to the amount of property as equalized by the state board, a resolu-

tion of the council fixing a certain rate per cent. of taxation, and not specifying the amount of the tax, was void: *In re Cloquet Lumber Co.*, 61 Minn. 233. And where, contrary to express statutory provisions, the county commissioners attempted to levy the county tax by percentages and not by specific amounts, and the tax for that year was extended on the tax-list and based on such attempted levy, the county tax based on such levy was void: *Wells County v. McHenry*, 7 N. D. 246; *Dever v. Cornwell* (N. D.), 86 N. W. Rep. 277. A statute providing that a high-school board shall furnish to the board of supervisors an estimate of the amount required to run the high school for the year, and that the supervisors shall levy a special tax sufficient to maintain the high school, such tax to be "computed . . . and collected in the same manner as other taxes," is not void as fixing no maximum rate and providing no rule of computation: *People v. Lodi High-School Dist.*, 124 Cal. 694.

majorities,¹ in regular meetings,² at the time³ and place⁴ fixed by law, and any attempt to act otherwise is invalid.⁵ And they cannot refer the authority to tax which is vested in the aggre-

¹ A tax levied by less than a quorum of a city council is void: *Somerset v. Somerset Banking Co.* (Ky.), 60 S. W. Rep. 5. What is sufficient evidence that requisite proportion of justices entitled to attend acted in levying tax: *Central Trust Co. v. Ashville Land Co.*, 72 Fed. Rep. 361. 18 C. C. A. 590. Council consisting of president and six trustees—no tax to be ordered except by two-thirds vote of members—if only four votes cast tax invalid: *Whitney v. Hudson*, 69 Mich. 189.

² Official action taken by a school board when all its members were present held valid though the meeting was neither a regular one nor one specially called in the statutory manner: *Lawrence v. Trainer*, 136 Ill. 474. Where the charter required a resolution for laying taxes to be adopted by aldermen and approved by mayor, it is not well adopted by aldermen and mayor sitting together with no formal approval: *Walker v. Burlington*, 56 Vt. 131. Where a township board is only authorized to vote to raise money for township expenses at a regular meeting, a tax to defray ordinary expenses levied at a called meeting is void where the records show that only three members of the board were present and do not show that the fourth member was notified: *Harding v. Bader*, 75 Mich. 316. Where a statutory meeting of a board of county commissioners is for the sole purpose of school business, an order for a gravel-road tax is void: *Fahlor v. Wells*, 101 Ind. 167. A special meeting of the board at which a levy is made will be pre-

sumed to have been rightfully held: *Brigins v. Chandler*, 60 Miss. 862.

³ Where commissioners on the day fixed by statute meet to determine the rate of a tax, they may defer action, and adjourn to a specified day, because of a member's absence; and a levy on the adjourned day is valid: *St. Louis Bridge & T. R. Co. v. People*, 127 Ill. 627. A levy of taxes by supervisors at an adjourned meeting, when they had no power to adjourn, is void: *Smith v. Nelson*, 57 Miss. 138. Where supervisors have power to levy a tax only at their regular session, if that session is finally adjourned, and they come together, change their record so as to show a temporary adjournment, and vote a tax, the vote is void: *Scott v. Union County*, 63 Iowa 583. Where the statute requires assessors, before beginning their assessment, to give three weeks' notice to all taxables to bring in to their meeting their accounts of ratable estate, the special levy to be made "at the next annual assessment" is to be made at the beginning of such assessment: *Cranston Town Council's Petition*, 18 R. I. 417. The election upon the general question of tax having occurred in March, 1883, a levy in December, 1883, was soon enough, although the act of April 26, 1880, required the levy to be made "immediately" after the election; and a list made from the assessor's returns for 1883 was made "from the last annual assessment," within the meaning of the statute: *Walton v. Riley*, 85 Ky. 413. Under a statute taking effect from its passage, and giving the supervisors of a

⁴ A levy of taxes by a board of supervisors is void if made at a place where the board has not authority to meet:

Johnson v. Fritch, 57 Miss. 33; *Capital State Bank v. Lewis*, 64 Miss. 727.

⁵ See *ante*, pp. 440-443.

gate body to a committee or clerk with powers of final action.¹ But what is done by them within the limits of their authority will be construed favorably, and if, where they have the power to make a levy, the record shows an intent to do so, it will amount to a present levy,² which may be *prima facie* evidence

county power to levy a tax on the railroad property in their county, based on the assessment per mile of the same property made by the state for its purposes, such tax can be levied at any time after the passage of the act, based on a state assessment made previous to the act: *Norfolk & W. R. Co. v. Supervisors*, 87 Va. 521. The time fixed by statute for laying a tax having expired, the authority for making the levy is ended, and, therefore, *mandamus* will not issue to compel it: *Wells v. Commissioners*, 77 Md. 125.

¹ *Mercer County Court v. Navigation Co.*, 8 Bush 300; *Kansas v. Hannibal & St. J. R. Co.*, 81 Mo. 285; *St. Louis & S. F. R. Co. v. Epperson*, 97 Mo. 300; *State v. Hannibal & St. J. R. Co.*, 110 Mo. 265, 135 Mo. 618; *State v. Sickles*, 24 N. J. L. 125; *Robinson v. Dodge*, 18 Johns 351; *Trumbull v. White*, 5 Hill 46. A tax purporting to be levied by the authorities of two districts meeting and acting jointly, held void: *State v. Reeves*, 28 N. J. L. 520. Tax levied in pursuance of joint action by highway commissioner with township supervisor and clerk, whereas action should have been commissioner's, held void: *Michigan Land & T. Co. v. L'Anse T'p*, 63 Mich. 700.

² *West v. Whittaker*, 37 Iowa 598; *Snell v. Fort Dodge*, 45 Iowa 564; *Harding v. Bader*, 75 Mich. 316. A valid levy cannot be accomplished by a mere resolution of a city council purporting to levy assessments for certain funds for the fiscal year: *Engstad v. Dinnie*, 8 N. D. 1. A mere order by county commissioners that a levy based on the assessment of a

previous year be made for future years amounts to nothing as an actual levy of a tax: *Hodges v. Crowley*, 186 Ill. 305. Adoption of committee's report held a sufficient compliance with statute in regard to fixing amount of general city tax and ordering it to be levied: *People v. Wright*, 68 Hun 264. But where the statute provides that a certain tax shall not be spread unless directed by the board of supervisors, it is not enough for the board to adopt the report of the special committee appointed to recapitulate the reports from the townships: *Post v. Harris*, 95 Mich. 321. An order of the county court levying township taxes for prior years, which recites that special taxes to pay the bonds of a designated township had been omitted for those years, and which then orders the clerk of the county court to extend the taxes on defendant's property in said township at a certain rate, "said rate being the same as extended upon other property in said township for said years," is a sufficient levy of the tax: *State v. Hannibal & St. J. R. Co.*, 101 Mo. 136. A record of a township meeting which recites merely that the request of the highway commissioners to gravel certain roads was granted, held sufficient to show the levy of a special road-tax: *Chicago & A. R. Co. v. People*, 190 Ill. 20. A statute providing that the county commissioners "shall cause to be levied" an annual poll-tax, only contemplates a resolution by the board, the actual clerical work extending the tax being the assessor's duty: *People v. Ames*, 24 Colo. 422. The words "determine amount of

that the facts existed which fully warranted the board's action.¹

Conditions precedent to levy. Whatever preliminaries are by law made essential to the levy of a tax must be observed or the tax will be void. Thus, if the legal designation of a site is a condition precedent to authority to vote a tax for building a school-house, a tax voted for that purpose without such designation is void.² Where the statute requires an annual appropriation ordinance to be passed by a city council, failure in any one year to pass such an ordinance is fatal to the validity of sales for the non-payment of taxes for that year.³ And under a statute providing for the levy of a tax to pay judgments against a county, a levy by the county board of a tax for the payment of judgments is unauthorized if there are no judgments against the county when the levy is made.⁴

In some special cases of extraordinary taxation it has been customary to provide that no authority should be had for the

general tax for current year," as used in a statute defining the duties of trustees of incorporated towns, were held to mean final determination as to amount, assessment, and levy: *Kratli v. Larrew*, 104 Ind. 363. An order for a tax-levy which uses decimal points and figures in such a way as clearly to indicate what was meant was held not void because of the omission of the word "cents:" *Lake County v. Sulphur, etc. Mining Co.*, 66 Cal. 17. Under a statute requiring the county tax levy to be in the form of a certain number of mills on the dollar of valuation, a levy reading "County General Fund 6.006 mills," and stating subsequent charges in the same manner as to the figures, is presumed to intend to levy six mills on every dollar of valuation: *Henderson v. Hughes County*, 13 S. D. 576. The fact that a levy, when made by the board of supervisors, was entered on the books of the commissioners of revenue, is immaterial, and does not affect the validity of the levy: *Norfolk & W. R. Co. v. Supervisors*, 87 Va. 521. That the rate for each fund

of the school tax was not separately found and levied does not invalidate the levy of the aggregate tax on railroad property at the average rate of the school districts of the county: *State v. Hannibal & St. J. R. Co.*, 135 Mo. 618.

¹ *San Antonio v. Berry*, 92 Tex. 319. An order of the county court levying township taxes for prior years was held, in view of its recitals, to be *prima facie* evidence both that the taxes for the designated years had been omitted, and that the rate for those years was the same as that therein levied: *State v. Hannibal & St. J. R. Co.*, 101 Mo. 136.

² *Marble v. McKenney*, 10 Me. 332; *Gustin v. School District*, 10 Gray 85; *Stickney v. Orford*, 64 N. H. 299.

³ *Riverside Co. v. Howell*, 133 Ill. 256.

⁴ *Custer County v. Chicago, B. & Q. R. Co. (Neb.)*, 87 N. W. Rep. 341. An order of a county board allowing a claim against the county is not a judgment within the meaning of the statute providing for the levy of a tax to pay judgments: *Ibid.*

taxation, or for contracting debts to be paid for by taxation, unless petitioned for by a specified number of taxpayers and the facts verified in some prescribed form for the action of the proper board.¹ Frequently an estimate or a statement or report by some board or officer of the amount of funds required,² or an order by some court, judge, or jury, directing the levy³ is provided for,⁴ and the question of compliance therewith is to

¹ See *Couper v. Rowe*, 42 Ga. 229; *Cain v. Commissioners*, 86 N. C. 8. Where a petition from taxpayers is the foundation of the proceedings, mere technical defects will be disregarded: *Scott v. Hansheer*, 94 Ind. 1; *Jussen v. Board, etc.*, 95 Ind. 567. Where a statute requires a petition for a township levy to specify the amount sought to be appropriated, but not to exceed two per cent. per annum of the taxable property, a petition which states that it is desired to raise "the sum of \$2,800, or a sum equal to two per centum of all taxable property in said township," is good: *Williams v. Hall*, 65 Ind. 129. See *Wilson v. Hamilton County*, 68 Ind. 507. The fact that a statute which required the publication of a notice of the proposed application to the legislature for an assessment of a land tax was not complied with, did not invalidate a sale of land made to satisfy a tax so assessed: *Wells v. Austin*, 59 Vt. 157.

² A certificate of school directors as to the amount of money required to be levied by special tax, held not void though irregular in form: *Chicago & A. R. Co. v. People*, 155 Ill. 276. The estimates of the school board for a levy for school purposes need not recite that a levy of these taxes was authorized by the board: *Kansas City, Ft. S. & M. R. Co. v. Chapin (Mo.)*, 62 S. W. Rep. 1000. The omission of a school board to report the amount necessary for each fund, as required by statute, does not

invalidate the tax where the value of the property to be assessed has been ascertained, and where the rate necessary to raise the amount needed has been stated: the amounts may be calculated from the data given: *St. Louis & S. F. R. Co. v. Gracy*, 126 Mo. 472. Written request by president of board of health that county commissioners levy tax to defray board's expenses, sufficiently complies with statute: *State v. Rose*, 26 Fla. 117.

³ In Georgia county levies are for most purposes recommended by the grand jury: see *Couper v. Rowe*, 42 Ga. 229. But for certain necessary purposes the ordinary and county commissioners may levy taxes: see *Waller v. Perkins*, 52 Ga. 233; *Solomon v. Tarver*, 52 Ga. 405; *Walden v. Lee County*, 60 Ga. 296; *Arnett v. Griffin*, 60 Ga. 349; *Spann v. Commissioners*, 64 Ga. 498.

⁴ See *Baltimore v. Horter (Md.)*, 48 Atl. Rep. 445; *Turnbull v. Alpena*, 74 Mich. 621; *Gamble v. Auditor-General*, 78 Mich. 302; *Conley v. St. Clair Supervisors*, 88 Mich. 245; *Hawkins v. Carroll*, 50 Miss. 735; *State v. St. Louis & S. F. R. Co.*, 135 Mo. 77; *State v. Omaha*, 39 Neb. 745; *Lamoille v. R. Co. v. Fairfield*, 51 Vt. 257. Under the Missouri statute authorizing the county court to levy certain taxes without an order of the circuit court, and prohibiting it from levying any other tax except by such order, a tax not of the former class, levied without such order, is void: *State v. Wa.*

be certified by some local authority. The verification in these cases would not in general preclude the municipality from showing its falsity, but in favor of *bona fide* holders of municipal securities that may lawfully have been issued in reliance upon the municipal action, the verification will be held conclusive.¹ But this principle has no application to a case where the municipal authorities have assumed to act and to issue negotiable securities without any legislative authority,² nor to a case where the securities on their face show a failure to comply with a statutory requirement.³ Securities issued under such circumstances cannot be validated by any act of the officers.

Where it is made the duty of some board or officer to ap-

bash, St. L. & P. R. Co., 97 Mo. 296; State v. Mississippi River Bridge Co., 134 Mo. 321. But the requirement of such an order has no application to levies to pay judgments recovered on railroad-aid bonds issued prior to such statute: State v. Hannibal & St. J. R. Co., 113 Mo. 297; State v. Ewing, 116 Mo. 129. A return by the highway commissioner showing a delinquent labor-tax is not a necessary preliminary to putting the tax provisionally on the assessment roll, where it can be canceled on presentation of receipts showing payment in labor: Lake Superior Ship Canal, etc. Co. v. Thompson, 56 Mich. 493. The failure of the board of supervisors to examine all certificates, statements, etc., submitted to it showing the moneys to be raised in the several townships for schools and other purposes was held to be an irregularity at most, and in the absence of an affirmative showing of defects or of a denial of a hearing the tax was presumed valid: Auditor-General v. Hill, 98 Mich. 326.

¹ Knox County v. Aspinwall, 21 How. 539; Bissell v. Jeffersonville, 24 How. 287; Moran v. Commissioners, 2 Black 723; Mercer County v. Hackett, 1 Wall. 83; Lexington v. Butler, 14 Wall. 282; Grand Chute

v. Winegar, 15 Wall. 355; St. Joseph v. Rogers, 16 Wall. 644; Rock Creek v. Strong, 96 U. S. 271; San Antonio v. Mehaffy, 96 U. S. 312; Warren v. Marcy, 97 U. S. 96; Commissioners v. Bolles, 94 U. S. 104; Commissioners v. Clark, 94 U. S. 278; Pompton v. Cooper, 101 U. S. 196; Buchanan v. Litchfield, 102 U. S. 278; Bonham v. Needles, 103 U. S. 648; Pana v. Bowler, 107 U. S. 529; Sherman v. Simons, 109 U. S. 735; Coloma v. Eaves, 92 U. S. 484; Venice v. Murdock, 92 U. S. 494. There are many other cases to the same effect. Where by law the county commissioners are authorized to lay a certain fence tax on application of a majority of legal voters, the determination of the commissioners upon the application is final, and cannot be attacked on a showing that some of the applicants were not voters: Cain v. Commissioners, 86 N. C. 8. See First National Bank v. Concord, 50 Vt. 257; Mullikin v. Bloomington, 72 Ind. 161. But where the certificate is to be based upon an assessment roll it is void if made when there is no roll: People v. Suffern, 68 N. Y. 321.

² Hayes v. Holly Springs, 114 U. S. 120.

³ Bissell v. Spring Valley, 110 U. S. 162.

prove¹ a levy, the tax will be void unless such approval is given.²

Voting taxes in popular meetings. Many taxes are required to be voted by popular assemblages composed of all the voters of the municipality to be taxed, or, in some instances, of certain classes of the voters, supposed to be specially interested in the tax. It is consistent with the practice of early days that this method shall be adopted in all districts whose population is not too great to render it impracticable; and we find it general in school districts, and to a large extent, also,

¹ "Approval" of a levy means that it is accepted as good or sufficient for the purpose intended: *Board of Education v. Kingfisher*, 5 Okl. 82.

² Where local overseers authorized to levy a tax with the approval of two justices proceeded to levy without such approval, their action was held void: *Kitchen v. Smith*, 101 Pa. St. 452. Under the Rhode Island statute the amount of a school-district tax may be approved by the school committee after as well as before the district has voted it: *Seabury v. Howland*, 15 R. I. 446. County commissioners have nothing to do with levying taxes for independent school districts in the sense of determining the amount to be raised or of approving the action of the district in the matter: *State v. Lakeside Land Co.*, 71 Minn. 283. A resolution of a city council approving the estimates of the board of education is not final where the council afterwards submits such estimates to the board of estimates and orders the amount approved by the latter to be levied: *Board of Education v. Detroit Common Council*, 80 Mich. 548. In Michigan the county board of supervisors has the right to determine whether taxes on assessment rolls received by it from the township supervisors are authorized by law: *People v. Monroe County*, 68 Mich. 283. Where a city board of trustees

was directed by statute to levy a direct special school tax which would produce a sum that would make the amount required by the board of education, provided the levy should not exceed a certain rate, the amount of the levy within the limit was discretionary with the board of trustees, and it was not compelled to levy the amount reported and required by the board of education: *Board of Education v. Board of Trustees*, 96 Cal. 42. Where a statute required highway commissioners to levy sums found by them to be necessary, and to report to the town supervisors, affirmative action or order by the supervisors was unnecessary: *Peoria, D. etc. R. Co. v. People*, 116 Ill. 232. Under a statute providing that the trustees of cities should have the power to levy a special tax for school purposes, within certain limitations, and making it the county auditor's duty to make the proper assessment of special school-tax levied by the trustees, and extend the same on the tax duplicate, such trustees have the exclusive right to determine the amount of and make such levy within the limits prescribed, without any action by the county commissioners, since the latter are not charged with any duty relating to the levy or assessment of such tax: *Wood v. School Corp.*, 132 Ind. 206.

in towns, villages, and even some small cities.¹ And though in the larger districts, like counties, as well as in the cities generally, the authority is most commonly intrusted to representatives of the people, it is sometimes required, even in such cases, that the sense of the people shall be taken upon a proposed corporate debt or tax. The method of doing this must then be to submit distinct propositions, which can be voted upon by ballot.² A proposition to levy a tax for county buildings is required by the constitutions of several states thus to be submitted. A vote is void if it is taken before there is legislation authorizing it;³ and it is void, also, if conditions prece-

¹ In Illinois it is held that where, by statute, it is provided that it shall not be lawful for a school district to levy a tax for a specified purpose without a vote of the people ordering it, a contract of the district for such a purpose, without a vote, is void, and a tax therefor will be enjoined: *School Directors v. Fogleman*, 76 Ill. 189; *Thatcher v. People*, 93 Ill. 240; *Watts v. McCleave*, 16 Ill. App. 272. In Michigan, where the delinquent taxes for which land is sold include school taxes which were not authorized by any recorded vote of the electors of the school district, the sale is invalid: *Burroughs v. Goff*, 64 Mich. 464. And in that state certain other taxes require a vote of the electors or cannot be voted by the township board unless first submitted to them: *Mills v. Richland T'p*, 72 Mich. 100; *Tillotson v. Webber*, 96 Mich. 144. Under the constitution and statutes of Missouri an increase of the school tax beyond the annual rate, without any vote of the taxpayer therefor or estimates furnished by the county clerk, is unauthorized and void: *Kansas City, Ft. S. & M. R. Co. v. Chapin* (Mo.), 62 S. W. Rep. 1000. As to when a vote for school taxes is not required in Arkansas and California, see *County Court v. Robinson*, 27 Ark. 116; *Cole v. Blackwell*, 38 Ark. 271; *People v. Castro*, 39 Cal. 65; *People v. Lodi High School Dist.*, 124

Cal. 694. As to when a vote for city levies is not required in North Carolina, see *Wilson v. Charlotte*, 74 N. C. 748; *Incher v. Raleigh*, 73 N. C. 267; see, also, *ante*, p. 471. In Nebraska a statute requiring the adoption by popular vote of the amount of tax to be levied to pay bonds, is amendatory: *State v. Babcock*, 21 Neb. 599. Town vote not required in Rhode Island to levy tax after merger of school districts in town: *In re Cranston Town Council*, 18 R. I. 417. Under the Nebraska constitution providing that county authorities shall never assess taxes beyond a certain aggregate unless authorized by a vote of the people, the legislature cannot make a petition by a majority of the electors of the county the equivalent of the popular vote required by the constitution: *In re House Roll*, 31 Neb. 505.

² A statute providing that the Australian ballot system shall be followed in all elections for public officers, and that the term "city election" so used in the act shall apply to any municipal election, does not apply to special elections held for the purpose of voting taxes: *Pritchard v. McConnell*, 109 Iowa 364; *Bras v. McConnell* (Iowa), 87 N. W. Rep. 290. As to the form of the ballots, see the latter case.

³ *Phelps v. Alfred Bank*, 13 Wis. 432; *Berliner v. Waterloo*, 14 Wis.

dent to the taking of it are not observed,¹ or if, under the existing law, there is no provision under which a part of the municipality concerned can take part in the election,² or if the vote itself is not such as the law requires.³ In special cases

378. The provision of the Louisiana constitution relating to the levy of road and bridge taxes is self-operative, and police juries can hold an election to take the sense of the taxpayers on the question of the levy of a tax without an enabling act: *Logan v. Ouachita*, 105 La. 499. In *People v. Supervisors*, 52 N. Y. 556, are some important rulings upon constitutional requirements respecting the submission to the people of laws for the creation of debts.

¹ *Byrne v. East Carroll*, 45 La. An. 392; *Chicago & N. W. R. Co. v. People* (Ill.), 61 N. E. Rep. 1068. An ordinance providing for a vote to levy an additional tax of one-third mill on the city's taxable property does not violate the spirit of the Texas statute which permits municipalities to submit a proposition to vote for a tax of a specific per cent.: *Austin v. Austin Gas-Light & C. Co.*, 69 Tex. 180. As to the requisites of an order by a school board directing that the question of an excess tax be submitted to the people: *Peoria & P. U. R. Co. v. People*, 133 Ill. 19. A statutory provision as to the time when the county judge should make an order preliminary to a popular vote was held mandatory: *Doores v. Var-non*, 94 Ky. 507. Under a statute requiring that notice of an election on the question of voting a railroad-aid tax shall specify points to which the road shall be "fully completed," if the notice speaks of the road's having "its line of railroad ironed and cars running thereon," this language is the equivalent of the requirement: *Yarish v. Cedar Rapids, I. F. etc. Co.*, 72 Iowa 556. A tax voted in aid of a railroad was held invalid where

the election notice failed to state to what point the road must be completed before the tax should become due: *Allard v. Gaston*, 70 Iowa 731. Though the statute required notice of the election to be given to the "tax-paying electors," notice to the taxable inhabitants is a substantial compliance therewith: *Cartwright v. Sing Sing*, 46 Hun 548. Notice held sufficient where it appeared therefrom that the election was to determine whether a tax should be imposed for school purposes: *Reynolds Land & C. Co. v. McCabe*, 72 Tex. 57. Notice of election to determine whether tax should be levied for maintaining a graded free school: *Williamstown Graded Free School Dist. v. Webb*, 89 Ky. 264. Immaterial omission in notice of election: *Eakins v. Eakins* (Ky.), 20 S. W. Rep. 285. A statute relating to tax elections is not inoperative because it does not provide a method, by registration or otherwise, of ascertaining who are the qualified electors of a school district: *Pickett v. Russell* (Fla.), 28 South. Rep. 764. That lists of registered voters furnished the inspectors were not certified is not sufficient to avoid the election: *Ibid.*

² *Campbell County Court v. Taylor*, 8 Bush 206; *People v. St. Clair Supervisors*, 11 Mich. 63.

³ When, as a condition to a tax, a favorable vote of a "majority of the electors of the township" is required, this means a majority of those who vote at the same election, whether voting on the tax proposition or not: *Enyart v. Trustees*, 25 Ohio St. 618. As to what is a majority vote, see *Sanford v. Prentice*, 28 Wis. 358. It was held in *North Car-*

statutes have provided that the question of contracting a debt or levying a tax shall be submitted to taxpayers only. In some states, by reason of special provisions in their constitutions, it is held not competent thus to restrict the vote;¹ but in other states such provisions have been supported.² Fraudulent practices, including bribery, are sufficient to invalidate an election.³

olina that the legislature could authorize less than a majority to vote taxes: *State v. Woodhouse*, 8 Ired. 104, 106. 9 Ired. 496. A statute providing that if a majority of the votes cast in a town shall be in favor of an annual tax for school purposes, the same shall be levied, does not conflict with a constitutional provision that no tax shall be levied by any town except for necessary expenses, unless by a vote of a majority of the qualified voters, as it sufficiently expresses the intent of the legislature; and if a majority of the voters of a town do actually vote the tax, the election will be sustained: *Rigsbee v. Durham*, 99 N. C. 207. In New Jersey it was held that a majority of the taxable residents of a school district must be present to vote on a proposition to raise money to buy land and build a school-house: *State v. Middlesex County School-District Trustees*, 49 N. J. L. 607. But a majority of the votes of the taxable residents present at the meeting was held sufficient in *Crandall v. Trustees*, 51 N. J. L. 138. In Texas it is held that under a constitutional authority to levy a tax "if two-thirds of the taxpayers of such city or town shall vote for such tax," this does not mean two-thirds of those who vote, but that all must be counted: *Fort Worth v. Davis*, 57 Tex. 225. But an election having been held, and a favorable result declared, the courts would inquire into the truth of the declaration only in a direct proceeding to contest the election; not in a suit by a taxpayer to contest the tax: *Dwyer v. Hockworth*, 57 Tex. 245. And

in *Werner v. Galveston*, 72 Tex. 22, it was decided that an act providing that a certain tax may be levied by municipal governments if two-thirds of the taxpayers voting shall vote in favor thereof, does not violate the constitutional provision above referred to.

¹ *Harrington v. Plainview*, 27 Minn. 224; *Bayard v. Klinge*, 16 Minn. 249; *Duperier v. Viator*, 35 La. An. 957.

² See *Bullock v. Curry*, 2 Met. (Ky.) 171; *Gould v. Sterling*, 23 N. Y. 439; *Duanesburg v. Jenkins*, 57 N. Y. 177; *Bennington v. Park*, 50 Vt. 178; *Venice v. Murdock*, 92 U. S. 494.

³ *Demaree v. Johnson*, 150 Ind. 419. The election in this case was to determine whether a town should aid a railroad by taxation. The violation of a statutory provision that no member of a city council shall be interested in any contract entered into by the city would not defeat a tax levied for the purpose of making payments under the contract: *Roberts v. First Nat. Bank*, 8 N. D. 504. In Louisiana an election to determine upon a proposition to aid a railway enterprise may be contested by the taxpayers in interest for "fraud, illegality, and irregularity." These words embrace all matters preceding the election and leading up to it, as well as matters affecting the election itself, and the suit must be brought within three months after the promulgation of the result of the election. A timely suit by some taxpayers, afterwards discontinued, would not suspend the running of the statute in favor of others: *Guillory v. Avoyelles R. Co.*, 104 La.

An election upon the question of a tax will not, however, be avoided by the setting off from the district, in the interval between the enabling act and the election, of a new district, where no one in the new district is permitted to vote or be taxed.¹

In Louisiana it is held that parish authorities in an ordinary election for railroad-aid purposes, announcing the result, and levying taxes, act not as representatives of the respective parishes, but as ministerial public agencies to ascertain the will of the people, and taxes levied under such election are levied by the taxing power of the owners of property, and not by the parishes under legislative authority.²

The repeal of a law under which a municipality was authorized, on a favorable vote of its electors, to lay a tax for a public work, will take away the power, even though the vote has been had, if any corporate act remains to be done to render the vote effectual.³

Calling popular meetings. A popular assemblage for any legal purpose must be regularly convened in such manner as the law may have prescribed. The coming together of a majority of the people of a municipality, or even of all the peo-

11. In North Carolina it has been held that it is no part of the duty of the judges of election to decide upon the number of qualified electors, but simply to declare the number of votes cast for or against the special tax, and report that fact to the board of commissioners; and the declaration of the result of the vote is not final, but it may be attacked in the courts for fraud or mistake, and the true vote, if there was fraud or mistake in the declaration of the result by the commissioners, ascertained and declared by the court: *Young v. Hendersonville* (N. C.), 40 S. E. Rep. 89.

¹ *Eakins v. Eakins* (Ky.), 20 S. W. Rep. 285.

² *Fullilove v. Police Jury*, 51 La. An. 359.

³ *Covington, etc. R. Co. v. Kenton County Court*, 12 B. Monr. 144. Be-

fore the repeal of a statute under which a tax in aid of a railroad had been voted, the railroad company had expended a small amount for preliminary surveys, but nothing for construction, and the road was finally constructed by a lessee of the company; but it did not appear that the construction was on faith of the tax. Held, that the levy of the tax should be enjoined: *Barthel v. Meader*, 72 Iowa 125. But where a police jury had proclaimed the result of an election in favor of a special railroad-aid tax, and had thereafter passed an ordinance levying the tax in accordance therewith, such jury was without legal capacity to pass subsequently another ordinance repealing the tax; the railway having in the meantime been completed and put in operation: *Missouri, K. & T. Trust Co. v. Smart*, 51 La. An. 416.

ple, at a time and in a manner not provided for by law, and the voting upon the levy of a tax, will have no legal force or validity whatever. In levying taxes, or in exercising any other function of government, the local community can only act under regular forms and according to customary legal regulations; and one of the conditions invariably is, that the power shall be exercised in an orderly manner, at a meeting assembled after due notice, and conducted according to legal forms, in order that there may be full opportunity for reflection, consultation, and deliberation upon the important work to be done. Nothing short of this will insure deliberative meetings, or prevent popular gatherings degenerating into mobs, and thereby defeating the purposes for which they are authorized.

Corporate meetings may be appointed by general statute which names a certain day¹ in the year on which they are to be held. In this manner provision is usually made for annual town and school-district meetings. Of such statutes every citizen is required to take notice, and a meeting assembled at the time and place appointed is a lawful meeting. This is probably the rule even where the notice of the meeting, which some statutes require to be given by publication, has been omitted; the notice by publication being provided for, not as an essential step, but only by way of additional precaution, to remind the people of the statutory provision which they are nevertheless bound to take notice of, whether the publication takes place or not. The right to hold the meeting comes from the statute, not from the published notice.² The same statute will commonly specify the subjects which may be considered at such meetings, and will limit any power to levy taxes which is permitted to be exercised. But to make the statutory notice sufficient, it would be necessary that the place of meeting be fixed, either by the statute itself or by some public act of

¹ It fixes the hour also unless it is otherwise determined. 235; *State v. Gates*, 22 Wis. 203. See *Merchant v. Langworthy*, 6 Hill 646.

² *People v. Brenham*, 3 Cal. 477; *State v. Jones*, 19 Ind. 356; *Dishon v. Smith*, 10 Iowa 212; *People v. Hartwell*, 12 Mich. 508; *People v. Cowles*, 13 N. Y. 350; *State v. Orvis*, 20 Wis. (Ill.), 61 N. E. Rep. 1068. As to requirement of statement by clerk in notice of annual meeting that proposition will be submitted, see *Chicago & N. W. R. Co. v. People*

which the electors were bound to take notice, and that the meeting be held as appointed.¹

All special meetings must be regularly called as the statute may have prescribed, for no one is under obligation to pay heed to any but the legal notice, and those who come together in pursuance of any other, do not, for legal purposes, represent the electors.² The following are customary regulations: That

¹A meeting adjudged to be valid under peculiar circumstances, though not held at the place designated: *Wakefield v. Patterson*, 25 Kan. 709. But a meeting out of the state would be a nullity: *Marion County Com'rs v. Barker*, 25 Kan. 258. Where a tax-levy was authorized by a town meeting in a town having more than one voting-place, it was not necessary that it appear at which place the meeting was held: *Chicago & N. W. R. Co. v. People*, 184 Ill. 240.

²*Thatcher v. People*, 93 Ill. 240, and 98 Ill. 632; *State v. Railroad Co.*, 75 Mo. 526. That a tax can only be voted at a meeting legally warned, see *Bowen v. King*, 34 Vt. 156; *People v. Jackson County*, 92 Ill. 441; *State v. Van Winkle*, 25 N. J. L. 73; *McPike v. Pen*, 51 Mo. 63; *State v. St. Louis, etc. R. Co.*, 75 Mo. 526; *Township Board v. Hastings*, 52 Mich. 528. Where the officers fix the place of meeting, it must be referred to in the notice: *Hodgkin v. Fry*, 23 Ark. 716. As to what is a sufficient warning, see *Allen v. Burlington*, 45 Vt. 202. A school-district tax voted at a meeting not legally called is void: *Haines v. School District*, 41 Me. 246; *Rideout v. School District*, 1 Allen 232; *People v. Castro*, 39 Cal. 65; *State v. Van Syckel*, 46 N. J. L. 492; *Canda Manuf. Co. v. Woodbridge*, 58 N. J. L. 134. A tax voted for a purpose not specified in the notice of special meeting is void: *Holt's Appeal*, 5 R. L. 603. Motion at school-district meeting held to indicate that the tax it referred to was that mentioned

in the notice of the meeting: *Vaughn v. School District*, 27 Or. 57. Construction of particular notices: *Williams v. Larkin*, 3 Denio 114; *Torrey v. Milbury*, 21 Pick. 64. A tax voted at a meeting warned without naming the hour of the meeting in the warrant is void, and it will not justify the collector in an action of trespass against him for taking property to satisfy the tax: *Sherwin v. Bugbee*, 16 Vt. 439. The return of a freeholder upon a warrant from the selectmen for warning a meeting of the inhabitants of a school district, that he had warned them according to law, was held to be conclusive in an action by one of the inhabitants against the assessors for assessing a tax on him which had been voted at such a meeting: *Saxton v. Ninms*, 14 Mass. 315. Under a statute which provided that "every town meeting shall be held in pursuance of a warrant under the hands of the selectmen," a warrant signed by one only was held void, and a tax voted at a meeting held pursuant thereto was invalid, and one who had paid it might recover back of the town: *Reynolds v. New Salem*, 6 Met. 340. As to the effect of fraudulent neglect to give notice or giving misleading notice, see *People v. Allen*, 6 Wend. 486; *People v. Reck*, 11 Wend. 604; *Marchant v. Langworthy*, 6 Hill 646; *Randall v. Smith*, 1 Denio 214; *Jewett v. Van Steenburgh*, 58 N. Y. 85. That in proving notice of a meeting it is not sufficient to state in the affidavit or return that the notice was given

the meeting shall be called by the officers of the municipality, either on their own motion or on the application of a certain number of the voters or freeholders;¹ that it shall be notified either by a warning² delivered or its contents stated to the

"in accordance with the act." but it should state the facts, see *State v. Hardcastle*, 26 N. J. L. 143; *Hardcastle v. State*, 27 N. J. L. 551; *Cardigan v. Page*, 6 N. H. 182; *Tuttle v. Cary*, 7 Greenl. 426. Compare *People v. Highway Com'rs*, 14 Mich. 528. But see *Briggs v. Murdock*, 13 Pick. 305; *Houghton v. Davenport*, 23 Pick. 235; *Bucksport v. Spofford*, 12 Me. 487. Where the defendants in an action of trespass justified as assessors, and showed by the records of the town that they were duly elected at a town meeting legally warned, they were held not bound to go behind the records to show that the proceedings of the warning officer had been regular: *Thayer v. Stearns*, 1 Pick. 109.

¹ A statute requiring that the petition to take the sense of voters upon a proposition to vote a tax for a graded school must be signed by "at least ten legal voters who are taxpayers in the district," the petitioners must themselves be taxpayers, it not being sufficient that their wives pay taxes: *Tate v. Board of Trustees* (Ky.), 49 S. W. Rep. 337. As to petition, see, also, *Chicago & N. W. R. Co. v. People* (Ill.), 61 N. E. Rep. 1068.

² Difference between "calling" a meeting and "warning" it: see *Stone v. School District*, 8 Cush. 592; *Rideout v. School District*, 1 Allen 232. And see, as to the call, *George v. School District*, 6 Met. 497. Where the warrant for a meeting specified as the object "to adopt such measures in relation to their ministerial concerns as may then and there seem expedient, and to act thereon as they see cause," held sufficient to support a vote of money in fulfillment of a

contract between the minister and a committee, under which he was to discontinue the pastoral relation: *Blackburn v. Walpole*, 9 Pick. 97. A warrant "to choose a district committee and to act on other business that may be thought necessary" does not authorize prescribing a method for calling subsequent meetings by the clerk, and therefore a subsequent meeting called by the clerk cannot legally vote taxes: *Little v. Merrill*, 10 Pick. 543. A warning for a school meeting which stated the object to be "to take into consideration the expediency of raising funds for the use of schooling for the year ensuing," held sufficient. A vote was taken "to raise one cent and five mills on the dollar" on the list for the year, without naming any time of payment. Held to be sufficiently definite, and the tax would be payable on demand, or within a reasonable time: *Bartlett v. Kinsley*, 15 Conn. 327. As to the effect of custom on the construction of votes of town meetings, see *Freeland v. Hastings*, 10 Allen 570, 578-9. An article in the warning of a school meeting, to see whether the district will have a school the ensuing winter, and to see what method the district will take to pay the expenses of said school, is sufficient to authorize the district to vote a tax upon the grand list to defray the expenses of the school: *Chandler v. Bradish*, 23 Vt. 416. A warning to see if a town will vote a tax for the purpose of paying a bounty does not authorize a vote to borrow money for that purpose: *Atwood v. Lincoln*, 44 Vt. 332. Though there is no article in a warrant for a town-meeting to vote for an assessment for a sewer, yet

several voters, or by notice published or posted in a manner particularly indicated by the statute; and that the subjects to be considered at the meeting shall be specified in the warning or notice. With all these provisions there must be careful compliance, and the meeting when held must confine itself strictly to the subjects indicated in the notice or warning.¹

Voting the tax. In voting the tax the people will be acting in their political capacity, and their action is to be favorably construed, and not to be overruled or set aside by judicial or any other authority, so long as they keep within the limits of the power bestowed upon them. Technical defects and irregularities should be overlooked, so long as the substance of a good vote sufficiently appears, for the obvious reason that local business is largely and of necessity in the hands of plain people who are unskilled in the technicalities of law and unaccustomed to critical or even accurate use of language.² A strict

under an article in a warrant for a meeting to see if an assessment will be laid for sewers constructed under the vote of the previous meeting, action levying such assessment may be ratified: *Smith v. Abington Savings Bank*, 171 Mass. 178.

¹ Where it is prescribed that an election to vote taxes shall be held as nearly as practicable in conformity with the general election law, and the general law requires the polls to be kept open from an hour after sunrise till sunset, a tax is void which is voted at an election held only from 1 to 6 o'clock p. m.: *People v. Seale*, 52 Cal. 71; compare *Holland v. Davis*, 36 Ark. 446.

² *Chicago & A. R. Co. v. People*, 190 Ill. 20, 22; *Irwin v. Lowe*, 89 Ind. 540; *Taymouth v. Koehler*, 35 Mich. 22. "F. moved to levy a tax," etc., "motion prevailed," held to amount to a present levy, the intent being clear: *Snell v. Fort Dodge*, 45 Iowa 564. And see *Shontz v. Evans*, 40 Iowa 139. At a school-meeting it was voted "that there be an appropriation sufficient to build a house

on," etc., and also that "\$800 be levied as a school-house tax." Held, that a tax was voted to build a school-house at the place named in the first resolution: *Benjamin v. Malaka*, 50 Iowa 648. A municipal vote taken on a proposition to levy "a special additional annual tax" was held, within the spirit of the statute, a proposition to authorize the levy of a "specific per cent.:" *Austin v. Austin Gas Light & C. Co.*, 69 Tex. 180. Under an act providing that the votes for school-taxes shall contain the words "for tax" or "against tax," with the sum placed thereafter which each voter prefers, held, that where the votes contained no sums a levy of any tax was illegal: *Rogers v. Kerr*, 42 Ark. 100. Election held not to violate provision of city charter that if there be more than one object for a special tax proposed at any election, the word "for" or "against" must be placed opposite each one of those objects: *Weston v. Newburg*, 67 Hun 127. The fact that at the election at which a proposition for the issue of bonds for pav-

construction of their doings would inevitably be mischievous, and would defeat the collection of the revenue in very many cases.¹ It will be found, therefore, that the courts sustain such action wherever sufficient intent appears to make plain the intent of the voters, provided the intent is warranted by the law.² On this principle a town vote, taken under a statute requiring a vote for town purposes to be definite, has been sustained where it specified various purposes particularly, and then in general terms mentioned such other expenses as the town might have to defray for the year.³ So the vote of "all the law will allow for school purposes" has been held sufficient—the law fixing a limit.⁴ So a vote "for court-house bonds" may support a tax where the board of supervisors by resolution submitted to the people the question of taxation for a new court-house and prescribed the form of ballot.⁵ So a vote to levy a railroad tax of five mills on the assessment will

ing a street was voted on, a proposition for bonds for building a bridge was also voted for, was held not to invalidate taxes for the payment of the bonds: *Maybin v. Biloxi*, 77 Miss. 673. Under a statute providing that "towns at their annual meetings may determine when their taxes shall be payable, and that interest shall be collected after that time," a vote declaring that interest should be collected after a certain time was not sufficient without a distinct vote declaring when the taxes should be payable, and a treasurer who issued a warrant for the collection of a tax "with interest thereon," without such a vote, was liable to the person arrested under the warrant: *Snow v. Weeks*, 77 Me. 429.

¹ *Chicago & A. R. Co. v. People*, 190 Ill. 20, 23; *People v. Chicago & A. R. Co. (Ill.)*, 61 N. E. Rep. 1064; *School District v. Garvey*, 80 Ky. 569.

² *Mowry v. Mowry*, 20 R. I. 74. In New Jersey towns have no authority to vote money to meet contingencies, but only for specified purposes. A vote for "incidental expenses" or for "incidentals," or for "incidental

purposes," does not designate with sufficient particularity the purpose for which the tax is imposed, and is of no validity: *State v. Saalman*, 37 N. J. L. 156; *State v. Cole*, 51 N. J. L. 277; *Rexroth v. Ames*, 55 N. J. L. 509. A town cannot by vote delegate to a committee its authority to levy taxes: *State v. Koster*, 38 N. J. L. 308.

³ *Wright v. People*, 87 Ill. 582. See the same case for the right of towns in Illinois to tax in advance to create a sinking fund.

⁴ *State v. Sickles*, 24 N. J. L. 125. See, further, as to the sufficiency of a vote for a school tax: *West v. Whittaker*, 37 Iowa 598; *Adams v. Hyde*, 27 Vt. 221; *Adams v. Sleeper*, 64 Vt. 544. As to voting school taxes in West Virginia, see *Wells v. Board of Education*, 20 W. Va. 157.

⁵ *Milwaukee, etc. R. Co. v. Kossuth County*, 41 Iowa 57. See, further, *Brunswick v. Finney*, 54 Ga. 317; *Tallman v. Cook*, 43 Iowa 330; *Brandirf v. Harrison County*, 50 Iowa, 164; *Hurt v. Hamilton*, 25 Kan. 76; *Silsbee v. Stockle*, 44 Mich. 561.

be held sufficient if the particular object of the vote is ascertainable by reference to the remainder of the record.¹ Other cases are mentioned in the margin.²

¹ *Shontz v. Evans*, 40 Iowa 139. As to voting a sum in gross or voting a percentage, see *Buck v. People*, 78 Ill. 560; *Reed v. Millikan*, 79 Ind. 86; *Marion County Com'rs v. Harvey County Com'rs*, 26 Kan. 181; *Weston Lumber Co. v. Munising T'p*, 123 Mich. 138. When unnecessary that vote should show rate per cent.: *Adams v. Sleeper*, 64 Vt. 544. Requirement that ordinance should state particular manner in which tax is to be assessed: *Frantz v. Jacob*, 88 Ky. 525. In levying a tax "for judgment fund," or "for city judgment tax," there is no latent ambiguity, and parol evidence is not admissible in a judgment creditors' suit that the city council did not intend the tax for the payment of his judgment: *Rice v. Walker*, 44 Iowa 458. For an exceedingly liberal construction of a vote, see *Casady v. Lowry*, 49 Iowa 523.

² A warrant for a town meeting stating the object, among other things, "to raise such sums of money as may be necessary to defray town charges for the ensuing year," is sufficient to legalize the voting of a tax for interest on the town debt: *West Hampton v. Searle*, 127 Mass. 502. Where a warrant for holding a town meeting stated that the purpose was to order a tax for specific purposes stated in such warrant, the omission of the vote taken at such meeting to specify the particular purposes for which the tax was to be assessed did not invalidate the tax: *Mowry v. Mowry*, 20 R. I. 74. A statement signed by the board of town auditors and authenticated by the clerk which merely says "that twenty-five per cent. of tax shall be levied on the real estate and personal property of

said town, including railroad track and rolling stock for town purposes, and for the payment of outstanding orders," is too indefinite to justify extending any tax: *Peoria, D. & E. R. Co. v. People*, 141 Ill. 483. As to the particularity required in stating the purpose of a town tax, see *Blodgett v. Holbrook*, 39 Vt. 336. The omission of a vote at a town meeting called to order town taxes to designate the kind of property to be assessed is supplied by a statute providing that at such meeting the electors may levy a tax on the ratable property of the town: *Mowry v. Mowry*, 20 R. I. 74. A school tax nominally levied for building purposes, but neither needed nor intended for that purpose, will be enjoined: *Appeal of Conners*, 103 Pa. St. 356. In New Jersey it is necessary that school-district meetings set apart specifically the sums voted by them to the several purposes, and the vote is void if they do not: *State v. Padden*, 44 N. J. L. 151. In Iowa a sub-district in a district township may vote a tax for a school-house in addition to that voted by the whole township; and its certification for levy may be compelled by *mandamus*: *Wood v. Farmer*, 69 Iowa 533. In Connecticut, in a vote of a school district levying a tax for its purposes, it is not essential to its validity that the particular object for which it was laid should be specified: *West School District v. Merrills*, 12 Conn. 436. A school-house having been erected under invalid votes, the district may lawfully vote a tax to pay for it: *Greenbanks v. Boutwell*, 43 Vt. 207. As to such meetings in general, their regularity and powers, see *Blackburn v. Walpole*, 9 Pick. 97;

If a proposition for a tax is voted down by the electors, it may be submitted a second time unless the statute in terms or by clear implication forbids.¹ And it has been held that, having the power to vote a tax, the electors have by necessary implication the power to rescind the vote, unless by so doing they interfere with vested rights.²

In some states township boards are given authority to levy taxes for certain necessary purposes where the electors have neglected or refused to vote.³

Record of votes. In every case of the levy of taxes, whether they be voted by representative bodies or by the people, it is

Perry v. Dover, 12 Pick. 206; Little v. Merrill, 10 Pick. 543; Williams v. School District, 21 Pick. 75; School District v. Atherton, 12 Met. 105; Cardigan v. Page, 6 N. H. 182; Nelson v. Pierce, 6 N. H. 194; Brewster v. Hyde, 7 N. H. 206; Lisbon v. Bath, 21 N. H. 319; Schoff v. Gould, 52 N. H. 512; Hunt v. School District, 14 Vt. 300; Pratt v. Swanton, 15 Vt. 147; Sherwin v. Bugbee, 17 Vt. 337; Wyley v. Wilson, 44 Vt. 404; Greenbanks v. Boutwell, 43 Vt. 207; Allen v. Burlington, 45 Vt. 202; Lander v. School District, 33 Me. 239; Jordan v. School District, 38 Me. 164; Belfast, etc. R. Co. v. Brooks, 60 Me. 568; State v. Hardcastle, 26 N. J. L. 143; Hardcastle v. State, 27 N. J. L. 551. That the officers or the inhabitants merely treat the proceedings of an invalid meeting as valid does not make them so: Pratt v. Swanton, 15 Vt. 147. Under a statute providing for the raising of revenue by a city for school purposes, the mayor and council thereof may levy an annual tax for such purposes, though a municipal election resulted against the issue of bonds for school purposes mentioned in the act: Ayers v. McCalla, 95 Ga. 555.

¹ Supervisors v. Galbraith, 99 U. S. 214.

² Hibbs v. Board of Directors, 110

Iowa 306. This case holds that where the electors of a school district vote to levy a school-house tax, they may rescind the same at the next annual election when the tax has not been certified or levied by the school board, though one of the electors has begun an action to compel the board to certify and levy the tax. Under the Iowa code a tax voted for the erection of a court-house may be rescinded by vote of the electors: Windsor v. Polk County (Iowa), 87 N. W. Rep. 704.

³ See Ryerson v. Laketon, 52 Mich. 510; Peninsular Iron & L. Co. v. Crystal Falls T'p, 60 Mich. 510; Williams v. Mears, 61 Mich. 86; Mills v. Richland T'p, 72 Mich. 100; Harding v. Bader, 75 Mich. 316; Gamble v. Auditor-General, 78 Mich. 302; Newaygo Manuf. Co. v. Echtman, 81 Mich. 416; Tillotson v. Webber, 96 Mich. 144; Auditor-General v. Duluth, S. S. & A. R. Co., 116 Mich. 122; Auditor-General v. Sparrow, 116 Mich. 574; Webster Lumber Co. v. Munising T'p, 123 Mich. 138. In Illinois, where the statute authorizes the electors present at the annual township meeting to levy a tax for all township purposes, the board of town auditors has no power to levy town taxes: Peoria, D. & E. R. Co. v. People, 141 Ill. 483.

requisite that the action which authorizes the levy or determines anything of importance concerning it should appear of record. This is very justly and properly insisted upon in the decisions of courts. "Every essential proceeding in the course of a levy of taxes," it is said in one case, "must appear in some written and permanent form in the record of the bodies authorized to act upon them. Such a thing as a parol levy of taxes is not legally possible under the laws."¹ And in another, in which

¹ *Campbell, J.*, in *Moser v. White*, 29 Mich. 50, 60. See also *Appeal of Powers*, 29 Mich. 504; *Taymouth Tp v. Koehler*, 35 Mich. 22; *Flint, etc. v. R. Co. v. Auditor-General*, 41 Mich. 635; *Williams v. Mears*, 61 Mich. 86; *Michigan Land, etc. Co. v. L'Anse Tp*, 63 Mich. 700; *Burroughs v. Goff*, 64 Mich. 464; *Rogers v. White*, 68 Mich. 10; *Harding v. Bader*, 75 Mich. 316; *Gamble v. Auditor-General*, 78 Mich. 308; *Newaygo County Manuf. Co. v. Echtman*, 81 Mich. 416; *Boyce v. Auditor-General*, 90 Mich. 314; *Loose v. Navarre*, 95 Mich. 603; *Doe v. McQuilkin*, 8 Blackf. 335; *Lee v. Crawford (N. D.)*, 88 N. W. Rep. 97; *Greer v. Howell*, 64 Tex. 688; *Hecht v. Boughton*, 2 Wyo. 398. Where a tax is ordered for a specific purpose, it must appear that it was levied for that purpose: *Louisville & N. R. Co. v. Commonwealth*, 89 Ky. 531. Under a statute requiring the official acts of each school board to be recorded by its clerk, a tax-levy which has been duly signed by the directors and filed with the township treasurer is not invalidated by the failure to record the directors' action in making the levy, since the officers charged with carrying the levy forward act upon the certificate of levy and not upon the record of the board: *Lawrence v. Trainer*, 136 Ill. 474. Where by law it is the duty of the board of supervisors to cause the amount of the arrearages of the road-tax returned by the overseer of highways to be levied and returned like other taxes, it is not necessary to the validity of such a tax that the board's records show it ordered the levy of the tax: *Wabash R. Co. v. People*, 135 Ill. 303. County commissioners, being authorized to subscribe to the stock of a turnpike company when satisfied that an amount sufficient to complete each mile subscribed to had been taken by private subscription, subscribed, but there was no record that they were satisfied as to the fact of such subscription. Held, that the levy was not void for the want of record evidence, as it appeared that the private subscription had been made: *Clark v. Leathers (Ky.)*, 5 S. W. Rep. 576. Entries by school-district board held equivalent to a formal order imposing tax and fixing rate thereof: *Eakins v. Eakins*, 20 S. W. Rep. 285. The records of the county court of claims, though inartificially kept, were held sufficient to sustain a tax-levy for certain years, as the proceedings of such bodies will be upheld if it can reasonably be done: *Fish v. Genett (Ky.)*, 56 S. W. Rep. 813. A township record showing a vote of highway and contingent taxes upon the day of the annual township meeting, sufficiently shows that the action taken was that of the electors, and it will be presumed that it was taken at the time provided by statute: *Auditor-General v. Longyear*, 110 Mich. 223. A city common council's failure to make an estimate, as required by the char-

the action of a convention of town delegates in voting a county tax was in question, "a record of the doings of such a convention is the only evidence to show a county tax duly granted."¹ The importance of the record is seen in the fact that it is intended by the law not only for evidence but for the only evidence of the action taken; and that when properly made up its recitals are conclusive; evidence to disprove them not being receivable.² The records ought to be duly authenticated on their face by the officers who make them, though if they have been kept in the proper custody and are identified beyond question this is probably not essential.³ If the record is lost or

ter, of the general expenditures before levying city taxes, will not be presumed from there being no entry thereof upon the council's record where such entry is not expressly required: *Auditor-General v. Hutchinson*, 113 Mich. 245. City taxes voted at a special meeting of a city council cannot be held void because the record does not show the members were duly notified of the call for the meeting, all not being present: *Auditor-General v. Sparrow*, 116 Mich. 574. The recital in an order of the county court, levying a tax for prior years, of the fact that those years had been omitted, and that no tax had been extended on the tax-book against defendant's property, is sufficient proof of the omission, and it was not necessary to show that defendant's property had been omitted for those years: *State v. Hannibal & St. J. R. Co. (Mo.)*, 11 S. W. Rep. 746. Records of a board of county commissioners showing levy of a specific amount for each item of county expense, held a sufficient compliance with the law as to such itemized statements: *Shuttock v. Smith*, 6 N. D. 56.

¹ *Richardson, J.*, in *Cardigan v. Page*, 6 N. H. 182, 191. See *Farrar v. Fessenden*, 39 N. H. 268, 277. *Fowler, J.*, says: "The records of taxes were properly received to prove the taxation, which, being matter of record,

could be proved in no other way, unless the loss of the records was first shown." See, also, *Paul v. Linscott*, 56 N. H. 347; *Hecht v. Boughton*, 2 Wyo. 368. In Nebraska, if the record fails to show that a school district tax was one authorized to be voted, it cannot be collected; but the mere failure to specify in the tax duplicate all the uses to which the moneys are to be applied is not fatal: *Burlington, etc. R. Co. v. Lancaster County*, 4 Neb. 293. In *Gearhart v. Dixon*, 1 Pa. St. 224, 228, it is said of the record of a school-tax, that "where it was defective it might be explained or supplied by parol testimony. . . . The law does not require school directors to keep a record of their proceedings, although it is better that they should do so." Compare *Moor v. Newfield*, 4 Me. 44. The omission from the record of a levy of the words "on the dollar" after the specification of the number of mills in case of some of the taxes voted, is a mere irregularity, and will not vitiate the proceedings: *Jefferson County Com'rs v. Johnson*, 23 Kan. 717.

² *Taylor v. Henry*, 2 Pick. 397; *Bissell v. Jeffersonville*, 24 How. 287; *Halleck v. Boylston*, 117 Mass. 469, and cases cited; *Eddy v. Wilson*, 43 Vt. 362.

³ The proceedings of a levying court in Arkansas were held not in-

destroyed, its contents are subject to parol proof as in other cases, after the necessary preliminary showing has been made.¹ But in the absence of evidence that a record ever existed, the fact cannot be made out by presuming it.²

When taxes are voted by a city council or other local body, a common and very useful provision is one that the yeas and nays shall be entered on the journal, so that no member shall escape his proper share of responsibility for the vote. Such a provision is mandatory,³ and if disregarded, a subsequent amendatory resolution passed after a change in the member-

valid because not signed by the members of the court, where they were written up by the authorized officer: *Hilliard v. Bunker*, 68 Ark. 340. A failure of the officers to sign the record of the board of supervisors does not vitiate a tax levied by it: *Lacey v. Davis*, 4 Mich. 140; *People v. Eureka, etc. Co.*, 48 Cal. 143; *Martin v. Cole*, 38 Iowa 141. But see *Weston v. Monroe*, 84 Mich. 341. In Kansas it said that if the proper officer has failed to record the levy of a tax the neglect will not be suffered to defeat it: *Kansas City, etc. R. Co. v. Tontz*, 29 Kan. 460. Though orders of the county court of claims were not signed by the county judge by his own hand, yet, as his name appears to them, it must be presumed to have been placed there regularly: *Fish v. Genett* (Ky.), 56 S. W. Rep. 613.

¹ *Irwin v. Miller*, 23 Ill. 348; *Farrar v. Fessenden*, 39 N. H. 268; *Quinby v. North American, etc. Co.*, 2 Heisk. 596. As to helping out defective records by proof, see *McReynolds v. Longenburger*, 75 Pa. St. 13.

² *Hilton v. Bender*, 69 N. Y. 75. Where the statute requires a levy of a special tax to appear of record in a book left in the office of the city recorder, the tax-deed, though *prima facie* evidence, is defeated by showing that no record was made; a mere memorandum by the city recorder will not suffice: *Hintrager v. Kiene*,

63 Iowa 605. The presumption that public officers did their duty cannot establish jurisdictional facts required to support action by the voters of a town in regard to the question of paying road taxes in labor, such as the filing of a petition and the giving of notice of the meeting: *Cleveland, C. C. & St. L. R. Co. v. Randle*, 183 Ill. 364. In Michigan, by statute, proof in tax cases that no record can be found is not proof that it never was made, and the presumption in favor of a tax-title may sustain the proceedings: see *Upton v. Kennedy*, 36 Mich. 215; *Redding v. Lamb*, 81 Mich. 318; *Benedict v. Auditor-General*, 104 Mich. 269.

³ *Steckert v. East Saginaw*, 22 Mich. 104; *Pickton v. Fargo* (N. D.), 88 N. W. Rep. 90. Compare *Tobin v. Morgan*, 70 Pa. St. 229. A different rule seems to prevail in New York: *Striker v. Kelly*, 7 Hill 9; *Elmendorf v. New York*, 25 Wend. 693. A resolution by a city council levying a general city tax is neither an ordinance nor a proposition to create any liability against the city, or for the expenditure or appropriation of its money, so as to require a yeas and nays vote: *Shuttuck v. Smith*, 6 N. D. 56. In Arkansas it is held that no rule requires the yeas and nays to be called and taken down on the voting of an appropriation by the levying court: *Hilliard v. Bunker*, 68 Ark. 340.

ship of the body will not save it.¹ But without such a provision it would be necessary only that the record should show a quorum present and the proposition adopted.²

Promulgating and certifying the vote. Sometimes the statutes provide that public and official promulgation shall be made of the result of an election held to determine whether a tax should be voted; and it has been held that such promulgation is essential to the validity of the tax voted.³ A tax, when voted by the people or by a local board, is sometimes required to be certified to some other authority by which final action in the case is then taken. This in several states is the case with school taxes, the votes for which are required to be certified by the proper school district officer to the township or county officers for the levy of the tax. It has been held in several cases that the certificate was jurisdictional, and that a levy without it could not be supported.⁴ But if the certificate is given and

¹ Pontiac v. Axford, 49 Mich. 69.

² Where the record stated that A., B., C., and others, justices of the county court, were present, held not enough, as it did not affirmatively appear that a majority was present: Dudley's Ex'rs v. Oliver, 5 Ired. 227. Compare State v. McIntosh, 7 Ired. 68; Insurance Co. v. Sortwell, 8 Allen 217; Lacey v. Davis, 4 Mich. 140; Hilliard v. Bunker, 68 Ark. 340.

³ Reynolds, etc. Co. v. Monroe, 45 La. An. 1024. An order making a levy for irrigation purposes need not recite the election authorizing it, though such election is a condition precedent to a valid levy. Cooper v. Miller, 113 Cal. 238. Where the tax-bills are properly authenticated it must be presumed that the proceedings of the city council were duly published: Powell v. Louisville (Ky.), 52 S. W. Rep. 798, citing Fonda v. Louisville (Ky.), 49 S. W. Rep. 785.

⁴ Sage v. Auditor-General, 72 Mich. 638; Gamble v. Auditor-General, 78 Mich. 302; Burlington, etc. R. Co. v. Saunders County, 16 Neb. 123. So if given, but not complying in its es-

entials with the statute: Peoria, D. & E. R. Co. v. People, 141 Ill. 483; Chicago & A. R. Co. v. People, 163 Ill. 616; Mullins v. Andrews (Ky.), 45 S. W. Rep. 231; State v. Duryea, 40 N. J. L. 266; State v. Middlesex County School Dist. Trustees, 49 N. J. L. 607. So, where a certificate required to be made by the board of directors of a school district was made and signed by two of the directors after the board had adjourned, and without authority from the board: People v. Chicago & N. W. R. Co., 183 Ill. 311, and cases cited. But where the certificate of levy was prepared while the board was in session, and was not signed by the members, as they did not understand it to be necessary that their names should appear therein, the court properly permitted them to sign at the hearing of objections to the rendition of judgment for the taxes levied: Chicago & N. W. R. Co. v. People, 183 Ill. 247. The county authorities cannot levy for one year a school-tax that should have been certified to them for the year before:

is sufficient in substance, all mere technical defects and informalities should be disregarded.¹ Such certificate is not, however, conclusive.²

Adherence to the vote. When a proposition is required to be submitted to the people, and is actually submitted and passed upon, any subsequent modification by the officers who are to act upon it is *ultra vires* and nugatory.³ Those officers must

Weber v. Railway Co., 198 Ill. 451, citing Lebanon v. Railway Co., 77 Ill. 539. In Michigan it has been held that if the officer to whom the tax should be certified has no authority or discretion in the case, and he actually proceeds to levy the tax without the proper certificate, the failure to transmit it ought to be held the neglect of a mere formality, and the tax sustained: Smith v. Crittenden, 16 Mich. 152. See Upton v. Kennedy, 36 Mich. 215; Iowa R. Land Co. v. Carroll County, 39 Iowa 151; Union Trust Co. v. Weber, 96 Ill. 346. But as to this, see Matteson v. Rosendale, 37 Wis. 254; Powell v. Supervisors, 46 Wis. 210; Cairo, etc. R. Co. v. Parks, 32 Ark. 131; Worthen v. Badgett, 32 Ark. 496; Hodgkin v. Fry, 33 Ark. 716. Where a certificate was found in the county clerk's office with the file-mark thereupon, the presumption was that it was filed at the date named in the file-mark, and that the tax-levy was based on it: Gage v. Nichols, 135 Ill. 128, distinguishing Gage v. Bailey, 102 Ill. 11.

¹ West v. Whitaker, 37 Iowa 598; Snell v. Fort Dodge, 45 Iowa 564. Where a clerk was required to certify the "aggregate amount" of the tax required to be levied, it is enough if he certifies that the necessary amount of taxes was a certain per cent. on the town's taxable property. This gives information sufficiently definite, and the form of words is immaterial: Gage v. Bailey, 102 Ill. 11; Burlington, etc. R. Co. v. Lancaster

County, 12 Neb. 324. See Dent v. Bryce, 16 S. C. 1; State v. Thompson, 18 S. C. 538; State v. Gadsen County, 17 Fla. 418; Hodgkin v. Fry, 33 Ark. 716. Where a board of town auditors had no authority to levy town taxes, but only to certify claims audited, a certificate by it "that we want \$100 for town purposes" was insufficient to justify the levy of a tax to raise that sum, since it could not be presumed, in the absence of any certificate of claims audited, that the amount certified was for the purpose of paying such claims: St. Louis, R. I. & C. R. Co. v. People, 147 Ill. 9, following Peoria, D. & E. R. Co. v. People, 191 Ill. 483. If a certificate for the levy of an agricultural society tax is required to be signed and sworn to by the president and secretary of the society, it is fatally defective if signed and sworn to by one of them only: Hogelskamp v. Weeks, 37 Mich. 422.

² Baltimore & O. S. W. R. Co. v. People, 156 Ill. 189, which holds that although the town clerk certified that a tax was voted at a certain town meeting, a record of such meeting showing that no such tax was levied is competent evidence against the tax.

³ Platteville v. Galena, etc. R. Co., 43 Wis. 493; Hodgman v. Railroad Co., 20 Minn. 48; State v. Daviess County, 64 Mo. 30. Under a statute restricting the highway money tax to fifty cents on \$100 valuation, a tax of one per cent. voted for highway purposes cannot be treated as though

obey and keep within the vote taken,¹ and it is their duty to take positive action to levy a tax for which the popular vote calls.² Where, however, the conditions on which a tax was voted have not been complied with, the collection of such tax cannot be enforced.³

Conclusiveness of municipal action. In all legal proceedings, after proper evidence is given of municipal action, it is always to be assumed that the municipality, whether represented by its people or by its official board, has acted wisely and well upon all matters of policy and of discretion which have been submitted to it, and that the conclusion was warranted by the facts and circumstances which were the basis of its action. The courts have no power to review their action, so long as they are found to have kept within the limits of their authority. The legislature, which gives and recalls at pleasure the power to tax, may do so, but not the courts.⁴

A learned and able court has spoken very clearly and pointedly concerning the absence of power in the judicial tribunals

one-half of it were for labor, and such tax is void: *Peninsular Savings Bank v. Ward*, 118 Mich. 87. A resolution to raise a sum of money to build a school-house was followed by a resolution that several bonds, payable in successive years, should be issued. Held, that it was erroneous to issue a certificate to levy the whole amount in one year: *State v. Clark*, 52 N. J. L. 291.

¹ *Sullivan v. Walton*, 20 Fla. 552; *Carlton v. Newman*, 77 Me. 408; *Rowell v. Horton*, 57 Vt. 31. The legislature cannot authorize the assessment on a school district of an excess expended by the district officers in the absence of a vote by the district to raise such excess: *Carlton v. Newman*, 77 Me. 408.

² *Iowa R. Land Co. v. Woodbury*, 39 Iowa 172. Omission of order making levy to state upon what conditions railroad-aid taxes voted at election should be paid did not invalidate levy, especially when clerk's

certificate contained the conditions: *Bartemeyer v. Rohlf*s, 71 Iowa 582.

³ *Cox v. Forest City & S. R. Co.*, 66 Iowa 289. Taxes voted to aid in the construction of a railroad cannot be collected for another company which has acquired the road: *Manning v. Mathews*, 66 Iowa 675; *Blunt v. Carpenter*, 68 Iowa 265. Where conditions precedent to the levy of a railroad-aid tax are not complied with, if the railroad company assigns its right to the tax, the assignee takes it subject to all equities: *Sully v. Drennan*, 113 U. S. 287. Where a town tax is raised to pay bonds issued in aid of a railroad the voters cannot apply it to any other purpose, even though the bonds are void: *Aurora v. Chicago, B. & Q. R. Co.*, 119 Ill. 246.

⁴ *Mayfield Woolen Mills v. Mayfield* (Ky.), 61 S. W. Rep. 43; *Young v. Lane*, 43 Neb. 812; *State v. Sheldon*, 53 Neb. 365.

to entertain appeals from the municipal bodies, in the exercise of their discretionary power to tax. The case was one in which the attempt was made to enjoin school directors from the levy of a tax regularly voted. "No such appeal lies, for none is given by law. Most of our tax laws entitle the citizen to a hearing before he is obliged to pay; not to a judicial hearing, indeed, but to an appeal to some special tribunals, generally the county commissioners; but the school law gives no such appeal. This is the reason why the ear of the courts should be open to well founded complaints on the part of the citizen: but where he has no irregularity, no neglect of duty, no excess of authority to complain of, nothing, indeed, but an indiscreet use of clearly granted discretion, he will vex the judicial ear in vain, for the judicial arm can redress no such wrong. The power of taxation, altogether legislative, and in no degree judicial, is committed by the legislature, in the matter of schools, to the directors of school districts. If the directors refuse to perform their duties, the court can compel them. If they transcend their powers, the court can restrain them. If they misjudge their power, the court can correct them. But if they exercise their unquestionable powers unwisely, there is no judicial remedy."¹ This is a clear and strong statement of a wise and salutary general principle.

When, therefore, a school district, having competent power by statute to do so, determines in due form of law to erect a school-house, no discontented party is to be heard to allege, as a basis for legal relief, that the building was unnecessary or the cost too great, or that in any other particular the action taken was unwise or impolitic. It is conclusive that it has been decided upon by the competent tribunal;² and if the decision was by a meeting of electors, the record of the meeting is conclusive that those who met and voted upon the question were competent to do so.³

¹ *Woodward, J.*, in *Wharton v. School Directors*, 42 Pa. St. 358, 364.

² *Williams v. School District*, 21 Pick. 75; *Powers's Petition*, 52 Mo. 218; *Wharton v. School Directors*, 42 Pa. St. 358.

³ *Eddy v. Wilson*, 43 Vt. 262. Possibly it might be otherwise if fraud

were alleged: see *Demaree v. Johnson*, 150 Ind. 419; *Guillory v. Avoyelles R. Co.*, 104 La. 11. The action of a town having authority to buy and improve a cemetery cannot be attacked on grounds of extravagance when the power has not been exceeded: *Jenkins v. Andover*, 103 Mass.

Judicial questions. It is possible, however, for judicial questions to arise under some tax laws, which must first be passed upon by the local authorities, but where their decision cannot be final. Many such questions are referred to in later chapters of this work. It has been held in Indiana that where a subscription of a township in aid of a railroad was by law to be made by county commissioners when certain facts appeared, the county commissioners in acting upon the facts were acting judicially, and an appeal would lie from them to the courts;¹ but the cases in which such an appeal would be allowable must be very rare.

Restrictions upon municipal taxation. All municipal corporations and bodies are, in respect to the power to tax, under certain restrictions, some of which inhere in the very nature of government, while others are expressly imposed. We have seen already that the states, by virtue of their membership in the Union, are by implication forbidden to lay any tax which would preclude or embarrass any federal agency, or the exercise of any federal power. What the states cannot themselves do, they cannot empower their municipal bodies to do.² Congress, as to the municipalities within the territories and the District of Columbia, might doubtless give larger powers of taxation than could be conferred by the states, but it is not customary to do so. We have also seen that by implication the powers of taxation that are conferred by the state are so restricted as to preclude the taxation of state agencies and state property.³ Also that local taxation must be restricted to local purposes.⁴ Upon these subjects nothing further need be said here.

But it has been deemed important by the people in many states that they go further and impose special restrictions, not only in respect to local taxation, but also in respect to state

94. That one has participated in an election to vote a tax does not estop him from questioning its validity: *Tate v. Board of Trustees (Ky.)*, 49 S. W. Rep. 337. That courts cannot restrict or restrain a power conferred to grant licenses for revenue, see *Kuiper v. Louisville*, 7 Bush 599, citing *Mason v. Lancaster*, 4 Bush 403.

¹ *County Com'rs v. Karp*, 90 Ind. 236.

² *Stuyvesant v. New York*, 7 Cow. 588; *Illinois Con. Fem. Coll. v. Cooper*, 25 Ill. 148; *Haywood v. Savannah*, 12 Ga. 404; *O'Donnell v. Bailey*, 24 Miss. 386.

³ *Ante*, p. 265.

⁴ *Ante*, ch. V.

levies; and they have, therefore, done so by their constitutions. Some of these are an absolute negation of taxation for certain purposes; as, for example, to give aid to private corporations.¹ Some such restrictions have been deemed necessary to prevent the state, as well as the municipalities, from engaging in wild schemes and speculative or extravagant enterprises, and they fix a limit to power which must be observed strictly. It is neither incompetent nor unusual for the state to confer upon its counties, townships, cities, and villages a very general authority to tax for their purposes all the subjects of taxation within their territorial limits as fully as the state itself taxes them.² But the power, both as to extent and duration, is during the pleasure of the legislature,³ subject only to the restrictions already mentioned, that when municipal corporations under competent authority have contracted debts, the creditors have a right to rely upon this power for their security, and it cannot afterwards be so far restricted as to prejudice their demands.⁴

¹In some cases a question has arisen whether such a restriction, when imposed in general terms, was a restriction on the state, and also on its municipalities. Without undertaking to classify them, the following are referred to: *Slack v. Railroad Co.*, 13 B. Monr. 1, 16; *Dubuque County v. Railroad Co.*, 4 Greene (Iowa) 1; *Clapp v. Cedar County*, 5 Iowa 15; *State v. Wapello County*, 13 Iowa 388; *Clark v. Janesville*, 10 Wis. 136; *Bushnell v. Beloit*, 10 Wis. 195; *Prettyman v. Supervisors*, 19 Ill. 406; *Robertson v. Rockford*, 21 Ill. 451; *Johnson v. Stark County*, 24 Ill. 75; *Perkins v. Lewis*, 24 Ill. 208; *Butler v. Dunham*, 27 Ill. 474; *People v. Chicago*, 51 Ill. 17, 34; *Richmond v. Scott*, 48, Ind. 568; *People v. Supervisors, etc.*, 16 Mich. 254; *Bay City v. State Treasurer*, 23 Mich. 449, 504. An exemption from "public taxes," held not to be an exemption from taxation for municipal purposes: *Morgan v. Cree*, 46 Vt. 773.

²*Wingate v. Sluder*, 6 Jones L. 552; *Durach's Appeal*, 62 Pa. St. 491; *Au-*

gusta v. National Bank, 47 Ga. 562; *Cheaney v. Hooser*, 9 B. Monr. 330, 339. Authority to assess "all taxable property" embraces all taxable at the time the authority is given, and all made taxable by subsequent legislation: *Buffalo v. Le Couteulx*, 15 N. Y. 451. A statute authorizing the town council of Beaufort to make such assessment on the inhabitants, or persons holding taxable property therein, as should appear expedient, conferred the power to impose such taxes as the council might deem expedient, without any specific limitation as to the amount or rate of such taxes: *State v. Town Council*, 39 S. C. 5.

³*Augusta v. North*, 57 Me. 392; *Richmond v. Richmond & D. R. Co.*, 21 Grat. 604.

⁴See *ante*, p. 121, and cases cited; also, *Louisiana v. Pillsbury*, 105 U. S. 278; *Hammond v. Place*, 116 Mich. 628; *Gillis v. Green*, 54 Miss. 592. When by constitutional limitation a city is restricted to a certain per cent. on the valuation at the time when

The most common of the express restrictions upon the municipal power to tax is one limiting the amount or the rate that can be imposed in any one year.¹ A municipal levy in disregard of the restriction is void.²

city bonds are voted and sold, it is not competent subsequently so to direct the taxing power of the city to other objects as to prevent payment of interest on the bonds. If the taxing power will not produce enough for all purposes, the proceeds should be shared *pro rata*: *Sibley v. Mobile*, 3 Woods 535.

¹ A provision in the constitution of a state that "the legislature shall restrict the power of such [municipal] corporations to levy taxes and assessments, so as to prevent the abuse of that power," is not self-executing; *Henderson v. Hughes County*, 13 S. D. 576.

² For constitutional limitations upon the amount or rate of taxation, see *ante*, pp. 172-177. For cases bearing upon statutory as well as constitutional restrictions, see *Macon County v. United States*, 134 U. S. 332; *Maish v. Arizona*, 164 U. S. 193; *United States v. Cicero*, 41 Fed. Rep. 83; *Drew County v. Bennett*, 43 Ark. 364; *Wells, Fargo & Co.'s Express v. Crawford County*, 63 Ark. 576; *Bode v. New England Inv. Co.*, 6 Dak. 499; *Ford v. Cartersville*, 84 Ga. 213; *Aurora v. Chicago, B. & Q. R. Co.*, 119 Ill. 246; *Wright v. Wabash, St. L. & P. R. Co.*, 120 Ill. 541; *Chicago & A. R. Co. v. People*, 155 Ill. 276, 163 Ill. 616; *People v. Lake E. & W. R.*, 167 Ill. 283; *O'Day v. People*, 171 Ill. 293; *St. Louis, R. I. & C. R. Co. v. People*, 177 Ill. 78; *Chicago & A. R. Co. v. People*, 177 Ill. 91; *Cleveland, C., C. & St. L. R. Co. v. Randle*, 183 Ill. 364; *Knopf v. People*, 185 Ill. 20; *Hodges v. Crowley*, 186 Ill. 305; *Wabash R. Co. v. People*, 187 Ill. 289; *Williams v. Poor*, 65 Iowa 410; *Atchison, T. & S. F. R. Co. v. Wilhelm*, 33 Kan. 206;

Atchison, T. & S. F. R. Co. v. County Com'rs, 47 Kan. 722; *Columbus Water Co. v. Columbus*, 48 Kan. 99, 378; *Midland Elevator Co. v. Stewart*, 50 Kan. 378; *Stewart v. Kansas Town Co.*, 50 Kan. 553; *Marion & M. R. Co. v. Alexander (Kan.)*, 64 Pac. Rep. 978; *Byrne v. Covington (Ky.)*, 21 S. W. Rep. 1050; *Gosnell v. Louisville (Ky.)*, 46 S. W. Rep. 722; *Lexington & E. K. R. Co. v. Trustees*, 54 S. W. Rep. 712; *Witkowski v. Bradley*, 35 La. An. 904; *Putnam v. Grand Rapids*, 58 Mich. 416; *Boyce v. Sebring*, 66 Mich. 210; *Seymour v. Peters*, 67 Mich. 415; *Hecock v. Van Dusen*, 80 Mich. 359; *Newaygo County Manuf. Co. v. Echlinaw*, 81 Mich. 416; *Schneewind v. Niles*, 103 Mich. 301; *Hammond v. Place*, 116 Mich. 628; *Cowart v. Taxworth*, 67 Miss. 322; *Huntley v. Winona Bank*, 69 Miss. 663; *Boquechitto v. Lewis*, 75 Miss. 741; *Chicago, B. & Q. R. Co. v. Nemaha County*, 50 Neb. 393; *Chase County v. Chicago, B. & Q. R. Co.*, 58 Neb. 274; *State v. Atlantic City*, 49 N. J. L. 558; *New York Savings Bank v. Grace*, 102 N. Y. 313; *State v. Atkinson*, 107 N. C. 317; *State v. Humphreys*, 25 Ohio St. 520; *State v. Strader*, 25 Ohio St. 527; *Birdseye v. Clyde*, 61 Ohio St. 27; *Atchison, T. & S. F. R. Co. v. Wiggins*, 5 Okl. 477; *Wiggins v. Atchison, T. & S. F. R. Co.*, 9 Okl. 118; *Corbett v. Portland*, 31 Or. 407; *Gadsby v. Portland (Or.)*, 63 Pac. Rep. 14; *Fingal v. Millvale*, 162 Pa. St. 374; *Dean v. Lufkin*, 54 Tex. 265; *Basset v. El Paso*, 88 Tex. 168; *Denison v. Foster*, 90 Tex. 22; *San Antonio v. Berry*, 92 Tex. 319; *Somo Lumber Co. v. Lincoln County (Wis.)*, 85 N. W. Rep. 1023; *Powder River Cattle Co. v. County Com'rs*, 3 Wyo. 597; *Grand Island & N. W. R.*

The legislature, in the plenitude of its power in matters of taxation, may of course make special exceptions, so as to authorize the incurring of particular obligations which will re-

Co. v. Baker, 5 Wyo. 369. A limitation as to one purpose which is specified is not a limitation as to others: *Brokaw v. Gibson*, 73 Ind. 543. The general laws of Iowa do not limit a city's power to tax so that, after levying ten mills for general city purposes and road purposes, it cannot levy a tax to pay a judgment against it: *Rice v. Walker*, 44 Iowa 458. That a school-district tax is not within a statute which limits the amount of a tax for town and county purposes, see *Taft v. Wood*, 14 Pick. 362; *Goodrich v. Lunenburg*, 9 Gray 38, 40; *Blickensderfer v. School Directors*, 20 Pa. St. 38. Where a village, after a cause of action has accrued against it, reorganizes under the general incorporation law, thereby obtaining a right to levy taxes at a higher rate than before, and the cause of action is then reduced to judgment, the village may levy taxes at the higher rate in order to pay such judgment, since by statute the liabilities of a municipality are not released by such a reorganization: *Carney v. Marseilles*, 136 Ill. 401. Under a statute providing for the assessment upon a municipality's taxable property of judgments against the municipality, and for the adding of the amount thereof to other municipal taxes, it is no defense that such assessment will increase taxation above the rate allowed by the charter: *Hammond v. Place*, 116 Mich. 628. A provision limiting a tax-levy was held not violated by a liability accruing annually though the aggregate of the accruals exceeded the limit: *Ludington Water-Supply Co. v. Ludington*, 119 Mich. 480. A paving assessment divided into five annual instalments, none exceeding five per cent. of the

assessed valuation, does not violate a statute limiting the amount to be raised in any one year in any special assessment district to five per cent. of the assessed valuation of the property included therein: *Boehme v. Monroe*, 106 Mich. 401. A levy of city taxes, not in excess of the limit prescribed by statute, is not rendered invalid by the making of a subsequent levy, which, together with the original levy, exceeds such limit: *Basset v. El Paso*, 88 Tex. 168. Where the statute authorizes a levy for two separate purposes, and requires the amount to be levied for each to be levied separately, in specific sums, the mere fact that a levy for one of those purposes does not exceed the statutory limit does not warrant the inclusion therein of items for the other purpose: *Chicago & A. R. Co. v. People*, 155 Ill. 276; *Knopf v. People*, 185 Ill. 20. Where the extent of a special tax in any one year is limited by the statute to an amount not exceeding the regular annual tax for such year, then if no regular annual tax is levied any attempt to levy a special tax must fail, as such tax in any amount would be in excess of the regular levy: *Walker v. Edmonds*, 197 Pa. St. 645. Under a statute limiting taxes for school purposes to two per cent. of the taxable property, "the valuation to be ascertained by the last assessment for state and county taxes," the assessment referred to is not that for the preceding year, although such assessment is still incomplete when the first step toward levying the school tax must be taken: *Wabash R. Co. v. People*, 147 Ill. 196. As to what assessment governs, see, also, *Culbertson v. Fulton*, 127 Ill. 30; *Lussem v. Sanitary Drainage*

quire taxation in excess of the general limitation to provide for them.¹

The general restriction. But the most important, and perhaps the most effective, restriction of all is the rule of law which requires all municipal organizations or boards to show the grant of any authority they may assume to exercise. Towns, it has been said — and the remark applies to all such organizations, — are corporations of limited powers; they cannot vote and assess money upon the inhabitants for all purposes indiscriminately, but must be confined to the established powers of towns, as settled by positive enactment or by well defined and ancient usage.² They cannot, therefore, tax ex-

Dist. (Ill.), 61 N. E. Rep. 544; *State v. Tomahawk Common Council*, 96 Wis. 73. How amount of taxable property in county is determined in order to ascertain rate of taxation: *State v. Kansas City, St. J. & C. B. R. Co.*, 116 Mo. 15.

¹ *United States v. New Orleans*, 98 U. S. 381; *Wolff v. New Orleans*, 103 U. S. 358. Where the power to tax is limited generally, a special act authorizing the levy of a railroad-aid tax enlarges it to that extent: *Quincy v. Jackson*, 113 U. S. 332. Under an act authorizing municipal corporations to levy a certain tax for school purposes, a city may levy such tax in excess of the amount of taxes authorized by its charter; the legislature having authority to extend its taxing power: *Werner v. Galveston*, 72 Tex. 22. See *Butz v. Muscatine*, 8 Wall. 575; *Commonwealth v. Pittsburgh*, 34 Pa. St. 496; *Commonwealth v. Alleghany County Com'rs*, 40 Pa. St. 348. A limitation of taxes to a certain percentage of the valuation is enlarged by implication when the legislature authorizes the creation of any particular debt, to the extent that may be necessary to meet the demand: *Commonwealth v. Alleghany County Com'rs*, 40 Pa. St. 348. A constitutional provision that when-

ever the expenses of any fiscal year shall exceed the income, the legislature may provide for a tax for the ensuing year sufficient to pay the deficiency, as well as the estimated expenses of the ensuing year, applies only to state taxes: *Mason v. Purdy*, 11 Wash. 591. A judgment entered upon a claim or evidence of indebtedness incurred in excess of the ordinary revenue of the county without a vote of the people, or in excess of the constitutional limitation, is not a public debt within the meaning of the constitutional provision that a county, in addition to the taxes levied to defray the ordinary expenses, may levy taxes to pay the public indebtedness: *Grand Island & N. W. R. Co. v. Baker*, 5 Wyo. 369. A constitutional provision restricting school-district taxation, but providing that for the purpose of erecting public buildings the rate limited may be increased when the rate of increase has been submitted to a vote of the people, etc., is not self-executing, but requires legislation to enforce it: *St. Joseph Board, etc. v. Patten*, 62 Mo. 444.

² *Shaw, Ch. J.*, in *Cushing v. Newburyport*, 10 Met. 508, 510. And see *ante*, p. 222. The legislature may, in its discretion, create independent

cept for the very purposes allowed by law, and in the manner and under the conditions prescribed by law.¹

Excessive taxes.² All statutes are mandatory which expressly or by implication limit the amount of taxes which may be levied. In the case of a state levy, if the state officers having authority for the purpose fix upon a percentage on the assessment which in their judgment will actually produce the required amount, the levy is not void, either in whole or in part, because the actual production is somewhat in excess.³ And it is not incompetent for a municipality having power to levy a tax for a specified purpose to add an item to provide for possible deficiencies in collection.⁴ But where the limit precisely fixed by law is exceeded by a sum which is spread

school districts without the assent of the residents, and authorize a board chosen by its voters to make an annual levy for the erection of buildings and the support of schools therein: *Kuhn v. Board of Education*, 4 W. Va. 409.

¹ See *ante*, pp. 465-475.

² An excessive tax is one exceeding what the amount would be if correctly calculated at the legal rate on the adjudged valuation as determined by the proper officers: *Pickens v. Board of Com'rs*, 112 N. C. 698. No tax is legal where the amount arbitrarily exceeds the purpose of its creation: *Kerr v. Wooley*, 3 Utah 456.

³ *Edwards v. People*, 88 Ill. 349; *Union Trust Co. v. Weber*, 96 Ill. 346. It is not competent to leave to a state board the power to fix the rate of state taxation "after allowing for delinquency in collection," since that would be a delegation of legislative power: *Houghton v. Austin*, 47 Cal. 646. Compare *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12.

⁴ See *Hyde Park v. Ingalls*, 87 Ill. 11; *Edwards v. People*, 88 Ill. 340; *People v. Wiltshire*, 92 Ill. 260; *Union Trust Co. v. Weber*, 96 Ill. 346; *People v. Cooper*, 10 Ill. App. 384; *Vose*

v. Frankfort, 64 Me. 229; *Lord v. Parker*, 83 Me. 530. Under the Michigan statute authorizing the supervisors of a ward to add to the assessment roll thereof not more than one per cent. to avoid fractions, the fact that he added such percentage to pay a former indebtedness of the ward to the county, caused by adopting too small a fraction the previous year, does not invalidate the roll: *Grand Rapids v. Welleman*, 85 Mich. 234. Although a statute restricts taxation in aid of railroads to five per cent. upon the taxable property in the township, still delinquents can lawfully be compelled to pay, in addition to such five per cent. tax and interest thereon, the penalty provided by law for delay in payment of taxes: *Chicago, M. & St. P. R. Co. v. Hartshorn*, 30 Fed. Rep. 541. Under a statute directing the county clerk to determine the rate per cent. on the assessed valuation that will produce the amount of the taxes levied and certified to him, he may, in computing the rate, consider the commission which the statute provides may be retained by the collector: *Chicago & A. R. Co. v. Baldridge*, 177 Ill. 229.

upon the whole roll, the whole levy is void,¹ even though the excess is for the purpose of paying a judgment, unless the judgment was rendered upon a contract entered into before the statutory limit was fixed.² An excessive levy is beyond the jurisdiction of the officers, and will be as deficient in the legal competency to make out a valid charge as if made without any authority whatever. This would not defeat a separate tax lawfully placed in a separate column on the roll, but it would invalidate whatever is blended with the excessive levy, and incapable of being separated.

Excess in a levy may happen from a sum which has been voted for an unauthorized purpose being included with others that are authorized,³ or from imposing more than is permitted for lawful purposes, or from the addition of unauthorized charges, or from errors of the officers, whereby either the ag-

¹ See *Kinsworthy v. Mitchell*, 21 Ark. 145; *Worthen v. Badgitt*, 32 Ark. 494; *Bucknall v. Story*, 36 Cal. 67; *School District v. Merrills*, 12 Conn. 437; *Hubbard v. Brainard*, 35 Conn. 563; *First Eccl. Soc. v. Hartford*, 38 Conn. 274; *Tucker v. Justices*, 34 Ga. 370; *Mason v. Rowe*, 3 Blackf. 98; *Hutchins v. Doe*, 3 Ind. 528; *Elwell v. Shaw*, 1 Me. 339; *Huse v. Merriam*, 2 Me. 375; *Lacy v. Davis*, 4 Mich. 140; *Burroughs v. Goff*, 64 Mich. 464; *Boyce v. Sebring*, 66 Mich. 210; *Seymour v. Peters*, 67 Mich. 415; *Wagar v. Bowley*, 104 Mich. 38; *Gerry v. Stoneham*, 1 Allen 319; *Commonwealth v. Savings Bank*, 5 Allen 428, 430; *Stetson v. Kempton*, 13 Mass. 272; *Libby v. Burnham*, 15 Mass. 144; *Joyner v. School District*, 3 Cush. 567; *Goodrich v. Lunenburg*, 9 Gray 38; *Stone v. Bean*, 15 Gray 42; *Wells v. Burbank*, 17 N. H. 303; *Kemper v. McClelland's Lessee*, 19 Ohio 308; *Drew v. Davis*, 10 Vt. 306; *Johnson v. Colburn*, 36 Vt. 693. As to levy of excessive fees, see *Mosher v. Robie*, 11 Me. 135; *Buell v. Irwin*, 24 Mich. 145; *Bailey v. Haywood*, 70 Mich. 188; *Prindle v. Campbell*, 9 Minn. 212; see *Goldsmith v. Rome R. Co.*, 62 Ga. 468;

Workman v. Worcester, 118 Mass. 168; *Edwards v. Taliaferro*, 34 Mich. 13; *Hammontree v. Lott*, 40 Mich. 190; *Wattles v. Lapeer*, 40 Mich. 624; *State v. Gosper County Com'rs*, 14 Neb. 22; *Marsh v. Supervisors*, 42 Wis. 502. Tax proceedings cannot be challenged upon the ground that the tax-rolls originally showed the tax-levy to be in excess of the amount actually levied, where it is shown that such excess was remitted and the rolls corrected before the tax-sale: *Torrington v. Rickershauser*, 41 Kan. 486.

² See *Witkowski v. Bradley*, 35 La. An. 904; also, *Dean v. Lufkin*, 54 Tex. 265.

³ *Culbertson v. Witbeck Co.*, 127 U. S. 326; *Hewitt v. White*, 78 Mich. 117; *Wagar v. Bowley*, 104 Mich. 38; *Collins v. Rea* (Mich.), 86 N. W. Rep. 811; *Squire v. Cartwright*, 67 Hun 218. A sale of land for taxes, including an illegal interest charge, cannot be upheld on the ground that the amount for which the land was sold was not in excess of what it would have been had a lawful collection fee which was omitted been added: *Bump v. Jepson*, 106 Mich. 641.

gregate is made too large, or individuals are charged more than their lawful proportion. In the latter case the individual taxes which were unjustly increased would alone be void; in the others the whole levy. The excess, however, may be insignificant and inappreciable in an individual tax, and when it is so it should be disregarded, on the maxim *de minimis lex non curat*. A case where the excess was but one dollar in \$450,000, the whole levy is plainly one for the application of this maxim.¹ But the maxim is one to be applied with caution. It has been said of it in a case where a tax was but slightly in excess of authority: "The maxim is so vague in itself as to form a very unsafe ground of proceeding or judging; and it may be almost as difficult to apply it as a rule in pecuniary concerns as to the interest which a witness has in the event of a cause; and in such case it cannot apply. Any interest excludes him. The assessment was therefore unauthorized and void. If the line which the legislature has established be once passed, we know of no boundary to the discretion of the assessors."² The like rule has been adopted in another case, which has held that any addition perceptibly increasing an individual tax avoids it.³ But in some states an excessive levy is sustained to the lawful limit,⁴ or in respect of those parts thereof which are for a lawful

¹ *Workman v. Worcester*, 118 Mass. 168; *People v. Kelly*, 33 Hun 389. See *Thatcher v. People*, 79 Ill. 597.

² *Mellen*, Ch. J., in *Huse v. Merriam*, 2 Greenl. 375, 376. The maxim of *de minimis* does not apply to a case of excessive taxation: *Lufkin v. Galveston*, 73 Tex. 340. Where a levy of taxes exceeded the limit of taxation by about three dollars, a deed based upon such levy was void: *Boyce v. Sebring*, 66 Mich. 210.

³ *Case v. Dean*, 16 Mich. 112. But an unintentional error may not have this effect: *O'Grady v. Barnhisel*, 23 Cal. 287, 296; *Kelly v. Corson*, 8 Wis. 182. See *State v. Newark*, 25 N. J. L. 399. An excess inserted to cover possible contingencies in collecting was held not to render assessors liable in trespass where they had acted in good faith, but only erred in judg-

ment: *Colman v. Anderson*, 10 Mass. 105. It has been held in Kansas that a slight addition to the roll may be made to provide for contingencies in collection, and that if it proves too much the tax will not be void in consequence: *Marion County Com'rs v. Harvey County Com'rs*, 26 Kan. 181.

⁴ In New Hampshire an excessive tax is held void for the excess only: *Taft v. Barrett*, 58 N. H. 447. In Iowa, where the law limited the amount to be levied to one per cent., and three were levied, it is said the levy to the legal limit may be upheld: *McPherson v. Foster*, 43 Iowa 48. In Rhode Island a town tax in excess of the statutory limit is not void as a whole, and will be sustained as to the part within the limit if the rest can be separated by mere computation: *Mowry v. Mowry*, 20

purpose.¹ Where a party comes into equity for relief against a tax, it will be as proper to make relief depend upon his paying what is just in a case in which the levy was excessive as in any other.² But a tax sale for the excessive tax must be void, at least, unless some statute expressly provides to the contrary,³ as is done in some states.⁴ And a levy at an excess-

R. I. 74. Where a county was prohibited by the constitution from levying a tax-rate of more than fifty cents in one year, a rate of twenty-five cents, where thirty-four cents had been levied previously, was void only as to the excess: *Whaley v. Commonwealth* (Ky.), 61 S. W. Rep. 35. A levy excessive as to the school-tax but not excessive in the aggregate was held valid in Massachusetts: *Alvord v. Collin*, 20 Pick. 418. As to the effect in Massachusetts of including excessive charges under a statute providing that assessments shall be void only to the extent of the illegal excess, see *Lynde v. Walden*, 166 Mass. 244. In Kansas, where a county tax was limited to ten mills a year, a tax of eighteen mills for the current expenses of prior years was not wholly enjoined, the court saying: "It may be that in those years only a small amount of tax was levied, and if so, the county may levy an additional amount for those years, provided the two levies for any one year do not exceed ten mills:" *Commissioners v. Blake*, 19 Kan. 299. In Arkansas it was held in *Worthen v. Badgett*, 32 Ark. 494, that an excessive levy could not be sustained even as to the amount that might legally have been voted; though when the levy is brought up on *certiorari* it will be quashed only as to the excess: *Vance v. Little Rock*, 30 Ark. 435. Also in Arkansas it is held that the fact that in addition to the five mills to which county taxation is limited, an additional tax was levied, does not render the entire tax void: *Wells, Fargo & Co.'s Express v. Crawford County*, 63 Ark.

576. In Nebraska the submission to popular vote of the question whether a levy in excess of the legal limit should be made, is void: *Burlington, etc. R. Co. v. Clay County*, 13 Neb. 367. And so would the levy be if made, even though the purpose was to pay previous indebtedness: *State v. Gosper County Com'rs*, 14 Neb. 22. See, on the general subject, *State v. Van Every*, 75 Mo. 530; *Cummings v. Fitch*, 40 Ohio St. 56.

¹Where part is legal and part is illegal the former will be sustained if they are distinguishable: see *O'Kane v. Treat*, 25 Ill. 557; *Briscoe v. Allison*, 43 Ill. 291; *State v. Allen*, 43 Ill. 456; *Allen v. Peoria, etc. R. Co.*, 44 Ill. 85; *People v. Nichols*, 49 Ill. 517; *Mix v. People*, 72 Ill. 241; *State v. Plainfield*, 38 N. J. L. 93; *Nalle v. Austin*, 91 Tex. 224; *San Antonio v. Berry*, 92 Tex. 319.

²*Connors v. Detroit*, 41 Mich. 128; *Neenan v. Smith*, 60 Mo. 292; *Commissioners v. Blake*, 19 Kan. 299.

³*Silsbee v. Stockle*, 44 Mich. 561. Judgment for entire tax arising upon assessment as a unit of property of different kinds, including property not legally assessable by the state board, and the part of the tax assessed against the latter property not being separable from the other part, is void: *Santa Clara County v. Union Pac. R. Co.*, 118 U. S. 194. See *California v. Central Pac. R. Co.*, 127 U. S. 1.

⁴In Iowa a statute provides that a tax-sale shall be upheld if any part of the tax for which the sale was made was legal: see *Parker v. Sexton*, 29 Iowa 421. As to sale on judgment for taxes, see *Reeve v. Ken-*

ive percentage upon the assessment cannot be sustained by showing that the valuation was greatly too low, and that the rate would not have been excessive had the valuation been in accordance with the statute.¹

Exhausting authority. The taxing power once conferred is presumptively continuous, and to be exercised again and again as often as may be required by the exigencies of government and as often as may be consistent with the act of delegation.² But custom has much to do with the construction of such powers, and sometimes a single exercise must be deemed to exhaust the power for the time being, when the custom is to tax but once within a certain period of time; as, for instance, within the year. And this is the general custom in the case of local taxes.³ If the amount of tax which by law can be in-

nedy, 43 Cal. 643. As to the effect of including excessive charges under a statute providing that no sale or levy of taxes shall be avoided by reason of any error whereby a person is assessed more than his due proportion: *Lynde v. Malden*, 166 Mass. 244.

¹*Wattles v. Lapeer*, 40 Mich. 624.

²See *Municipality v. Dunn*, 10 La. An. 57; *Williams v. Detroit*, 2 Mich. 560; *Meriden v. Fleming*, 93 Mo. 321; *State v. Holt County Court*, 136 Mo. 474. Two levies may be made in one year provided they are not made for different years: *Cincinnati, N. O. & T. P. R. Co. v. Commonwealth (Ky.)*, 51 S. W. Rep. 568.

³See *Vance v. Little Rock*, 30 Ark. 435; *Vance v. Van Every*, 75 Mo. 530; *Cummings v. Fitch*, 40 Ohio St. 56. Where a school board, which had power to levy a tax not exceeding one per cent. in one year, ordered a tax below the minimum, it exhausted its power for the year: *Oliver v. Carsner*, 39 Tex. 396. So in Oregon, after one assessment of all the taxable property has been made and returned, and the tax levied thereon, there is no power to make a new assessment in order to reach property brought into the district since the regular assessment: *Oregon Steam*

Nav. Co. v. Portland, 2 Or. 81. In Texas if a commissioners' court which has exhausted its authority in making a levy for ordinary purposes makes an additional levy in part for the same purpose, the whole is void: *Dean v. Lufkin*, 54 Tex. 265. Where the amount fixed by village trustees in their statement of "estimated ordinary expenditures" to the annual meeting of the village is fully raised in the annual assessment and tax thereafter levied, such trustees have no authority subsequently to levy a special tax for other items of ordinary expenditure: *Squire v. Cartwright*, 67 Hun 218. Additional levy by highway commissioners for road and bridge purposes to be made only on day of making regular levy: *St. Louis Nat. Stock Yards v. People*, 127 Ill. 627. Where the statute provides that the amount to be paid for water-rents "shall be annually raised as a part of the expenses of such village, and shall be levied, assessed, and collected in the same manner as other expenses of such village are raised," the trustees have no authority to levy a special tax to pay a part of the amount due on a contract for water-rents made subsequent to the annual meeting: *Squire v. Cart-*

posed for the year is already levied, the authority is of course exhausted, and a further levy under any pretense is void.¹ It is of no legal importance that the first levy which exhausted the power was made under the compulsion of judicial *mandamus*.² But an abortive attempt to make an assessment does not exhaust the power, and if no other obstacle exists, the officers may disregard the futile action and proceed anew.³

wright, 67 Hun 218. But an omission of the county court to exact license-taxes when making the general levy does not preclude making them afterwards: *State v. Maguire*, 52 Mo. 420. Though the electors have voted a levy for highway purposes which has been collected and expended, the highway commissioners may in the same year levy and collect not to exceed \$1,000 for repairs on bridges: *Longyear v. Auditor-General*, 72 Mich. 415.

¹ When the limit prescribed in the grant of the taxing power is reached the power is exhausted, and it is not material that the city will be unable to meet its current expenses and pay the interest on its outstanding indebtedness: *Corbett v. Portland*, 31 Or. 407. Where the limit of railroad-aid tax is five per cent., a county which has voted that to one road cannot make a further vote to another: *Dumphy v. Supervisors*, 58 Iowa 273. A city authorized to levy taxes not exceeding fifteen mills on the dollar for the year passed an ordinance levying a tax to that extent, and afterwards passed another levying two mills additional for a sinking fund. Held, that the first was valid and the last void. Had the whole been voted in one ordinance it seems the whole would have been void: *Cummings v. Fitch*, 40 Ohio St. 56. But perhaps it might be sustained if the amount actually levied did not exceed the legal limit: *People v. Cooper*, 10 Ill. App. 384. When the amount of school-house fund tax is limited to ten mills, a further tax to pay a judgment against the school

district cannot be levied, although there is a provision that where a judgment has been obtained against the school district the board shall pay it by an order the payment whereof is to be provided for by the district meeting: *Sterling, etc. Co. v. Harvey*, 45 Iowa 466. See, for a similar point, *Chicago & A. R. Co. v. People*, 177 Ill. 91; *Osborne County Com'rs v. Blake*, 25 Kan. 356. The levy of a one-mill tax for building county bridges the cost of which, by the statute, is made payable out of the fund provided for the current expenses of the county, is unauthorized and void where the levy for county expenses is already up to the limit allowed by statute: *Atchison, T. & S. F. R. Co. v. County Com'rs*, 47 Kan. 722. When county commissioners have made a levy of nine mills for general fund purposes they have no further power to levy an additional tax for payment of outstanding warrants previously issued against the general fund in excess of the statutory limit, unless authorized by popular vote: *Grand Island & W. C. R. Co. v. Dawes County (Neb.)*, 86 N. W. Rep. 934.

² *Vance v. Little Rock*, 30 Ark. 435.

³ *Himmelman v. Cofran*, 36 Cal. 411, citing *Pond v. Negus*, 3 Mass. 230; *Libby v. Burnham*, 15 Mass. 144; *Bangor v. Lancy*, 21 Me. 472. On the general subject, see, also, *Lappin v. Nemaha County*, 6 Kan. 403; *Boody v. Watson*, 64 N. H. 162; *Howell v. Buffalo*, 15 N. Y. 512; *People v. Haines*, 49 N. Y. 587; *Woodruff v. Fisher*, 17 Barb. 224.

CHAPTER XII.

LISTING OF PERSONS AND VALUATION OF ESTATES FOR TAXATION.

General course. When taxes for any particular district have been lawfully voted, it next becomes necessary, before a tax can become a charge upon either person or property, that a list of taxables should be made by the officer to whom by law that duty is intrusted. If the tax to be laid is a capitation tax, nothing more may be needful; but capitation taxes are so few and so unimportant that they scarcely call for more than a passing remark.¹ But when taxes are to be apportioned among the taxables in proportion to the value of property, or according to special benefits, or upon the results of business, it becomes requisite that an official estimate should be made for that purpose.² This estimate, when made under state laws, is commonly called an assessment, and the completed document is given the name tax list or assessment roll, or something equally significant and indicative of its nature. Under state laws general levies are most commonly made upon an assessment by the value of property, and it is of such an assessment that we shall speak in this chapter.

Nature of proceedings. The proceedings in the assessment of a tax are not, in any proper sense, hostile to the citizen; they are, on the other hand, proceedings necessary and indispensable to the determination of the exact share which each resident or property owner should take, and may and should be supposed desirous of taking, in meeting the public necessity for a revenue;—proceedings which the willingness of the taxpayer

¹ A certain statute and the territorial custom for thirty years were held to be complete provision of law for the assessment and collecting of military poll-tax: *People v. Ames*, 24 Colo. 422.

² No assessment is necessary when the statute itself prescribes the amount to be paid, and this can be recovered by suit: *King v. United States*, 99 U. S. 229; *United States v. Halloran*, 14 Blatch. 1; *United States v. Pacific R. Co.*, 1 McCrary 1, 4 Dill. 71.

cannot dispense with, and which only become hostile when the duty to pay, once fixed, fails to be performed by payment. Then, and only then, do the steps taken by the government assume a compulsory form; until then the reasonable presumption is that government and taxpayer will act together in harmony, and that the latter will meet his obligation to pay as soon as the former has performed its duty in determining the share to be paid.¹

Definition of assessment. An assessment, strictly speaking, is an official estimate of the sums which are to constitute the basis of an apportionment of a tax between the individual subjects of taxation within the district.² It does not, therefore, of itself lay the charge upon either person or property, but it is a step preliminary thereto, and which is essential to the apportionment.³ As the word is more commonly employed, an assessment consists in the two processes of *listing* the persons, property, etc., to be taxed, and of *estimating* the sums which are to be the guide in an apportionment of the tax between them.⁴ When this listing and estimate are completed in such form as

¹ See *Kelly v. Herrall*, 20 Fed. Rep. 364, 367; *Peru, etc. R. Co. v. Hanna*, 68 Ind. 562; *Herrick v. Amerman*, 32 Minn. 544; *Sawyer v. Gleason*, 59 N. H. 140; *Nance v. Hopkins*, 10 Lea 508.

² *People v. Weaver*, 100 U. S. 539, 545; *Perry County v. Railroad Co.*, 58 Ala. 456; *Lyman v. Howe*, 64 Ark. 436; *Chicago v. Fishburn*, 189 Ill. 367; *Rood v. Mitchell County*, 39 Iowa 444; *Geren v. Gruber*, 26 La. An. 694; *Wells v. Smyth*, 55 Pa. St. 159; *State v. Cheraw & D. R. Co.*, 54 S. C. 564; *Southern R. Co. v. Kay* (S. C.), 39 S. E. Rep. 785. To assess, in the statutes of Colorado, means to make an official estimate of value for the purpose of taxation: *People v. County Com'rs*, 27 Colo. 86. See *Gray v. Stiles*, 6 Okl. 455; *Mayfield v. Bradley*, 6 Okl. 547; *State v. Farmer* (Tex.), 59 S. W. Rep. 541.

³ *Evansville & I. R. Co. v. Hays*, 118 Ind. 214.

⁴ *Chicago v. Fishburn*, 189 Ill. 367; *Pomeroy Coal Co. v. Emlen*, 44 Kan. 123, 124, *State v. Cheraw & D. R. Co.*, 54 S. C. 564; *Southern R. Co. v. Kay* (S. C.), 39 S. E. Rep. 785. "To assess a tax is to adjudge and determine what proportion of his property the taxpayer shall contribute to the public, and to levy a tax is to make a record of this determination and to extend the same against his property: *Chicago, B. & Q. R. Co. v. Klein*, 52 Neb. 258. As used in the statute with reference to the presumption arising from a tax-deed, the words "listed and assessed" require that the property sold shall actually appear on the tax-list, and that the taxes shall be duly assessed: *Peebles v. Taylor*, 121 N. C. 38. The question, what is an assessment, is discussed in *Weber v. Reinhard*, 73 Pa. St. 370, a case of taxation of the product of mines by the ton.

the law may have prescribed, nothing remains to be done, in order to determine the individual liability, but the mere arithmetical process of dividing the sum to be raised among the several subjects of taxation, in proportion to the amounts which they are respectively assessed. Sometimes the word "assessment" is used as implying the completed tax list; that is to say, the list of persons or property to be taxed, with the estimates with which they are chargeable, and the tax duly apportioned and extended upon it;¹ but this employment of the word is unusual except in the cases in which the levy is apportioned by benefits; and in those cases the act of determining the amount of the benefits is of itself, under most statutes, a determination of the individual liability, and the result only needs to be entered upon the roll or list² to complete the levy.

Necessity for assessment. An assessment, when taxes are to be levied upon a valuation, is obviously indispensable. It is required as the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follow it. Without an assessment they have no support, and are nullities.³ The assessment is, therefore, the most important of all

¹ A statute limiting the time to contest taxes "for any error or defect going to the validity of the assessment," held to use the word "assessment" as going to the whole statutory method of imposing taxes upon property: *Prentice v. Ashland County*, 56 Wis. 345; *Levy v. Wilcox*, 96 Wis. 127. Under the constitution and statutes of Texas the word "assessment" embraces more than simply the amount, and includes the procedure on the part of the officials by which the property is listed, valued, and finally the *pro rata* declared: *State v. Farmer* (Tex.), 59 S. W. Rep. 541. As to the meaning of assessment in railroad cases in Alabama, see *State v. Jackson County*, 65 Ala. 142; *Perry County v. Railroad Co.*, 65 Ala. 391. Where a testator's property in a city had been assessed to him before his death, and the assessment rolls had been delivered to the aldermen as required by statute, but the taxes had not been ascertained and extended on the rolls, it was held that at testator's death his taxes had been "assessed" to him within the meaning of a statute giving a preference in payment to taxes assessed on a decedent's estate previous to his death: *In re Babcock*, 115 N. Y. 450. The proper assessment of taxes by the board of supervisors under the New York statutes requires not only the establishment of a ratio upon which the tax is to be based, but also the computation and entry in the assessment rolls of the amount to be levied: *People v. Hagadorn*, 104 N. Y. 516.

² For the meaning of "list" and "grand list" in Vermont, see *Wilson v. Wheeler*, 55 Vt. 446.

³ *People v. Weaver*, 100 U. S. 539, 545; *Perry v. Railroad Co.*, 58 Ala.

the proceedings in taxation, and the provisions to insure its accomplishing its office are commonly very full and particular.¹

Statutory requirements. The assessment being so important, the statutory provisions respecting its preparation and

456; *Driggers v. Cassady*, 71 Ala. 529; *Elyton Land Co. v. Birmingham*, 89 Ala. 477; *Waller v. Hughes* (Ariz.), 11 Pac. Rep. 122; *People v. Union*, 31 Cal. 138; *McKeown v. Collins*, 38 Fla. 276; *Quivey v. Lawrence*, 1 Idaho 313; *Early v. Whittingham*, 43 Iowa 162; *Worthington v. Whitman*, 67 Iowa 190; *Galusha v. Wendt* (Iowa), 87 N. W. Rep. 512; *Slaughter v. Louisville*, 89 Ky. 112; *Augusti v. Lawless*, 43 La. An. 1097; *Thurston v. Little*, 3 Mass. 429; *Thayer v. Stearns*, 1 Pick. 482; *Mullins v. Shaw*, 77 Miss. 900; *Abbott v. Lindenbower*, 42 Mo. 162; *State v. Wabash R. Co.*, 114 Mo. 1; *State v. Thompson*, 149 Mo. 441; *Nebraska City v. Gas Light Co.*, 9 Neb. 339; *Matter of Nichols*, 54 N. Y. 62; *Shuttuck v. Smith*, 6 N. D. 56; *Sheets v. Paine* (N. D.), 87 N. W. Rep. 117; *Eaton v. Bennett* (N. D.), 87 N. W. Rep. 188; *McCall v. Larimer*, 4 Watts 351; *Miller v. Hale*, 26 Pa. St. 432; *State v. South Penn. Oil Co.* (W. Va.), 24 S. E. Rep. 688. The owner of a lot sold for taxes was under no obligation, on finding on the annual record no valuation thereof, to apply to the taxing officers for correction, since there could be nothing to correct when there was no valuation for assessment: *May v. Traphagen*, 139 N. Y. 478. As an assessment is essential to constitute a liability for an *ad valorem* tax, a statute providing for the recovery of past-due railroad taxes cannot authorize the assessment of such taxes in the proceeding brought to recover them: *State v. Cheraw & D. R. Co.*, 54 S. C. 564. The state cannot maintain an action against an owner for taxes until a valid assessment has been made against the property: *Clegg v. State*,

42 Tex. 610. Where bonds, etc., issued by a corporation are to be taxed according to their actual value, a legal ascertainment of that value is essential to the assessment of a valid tax; the corporation's return of its indebtedness does not constitute an assessment, neither does the account settled by the auditor-general against the corporation: *Commonwealth v. Lehigh Valley R. Co.*, 104 Pa. St. 89. "An assessment is in the broadest sense a jurisdictional requirement": *Roberts v. First Nat. Bank*, 8 N. D. 504. And this defect of jurisdiction cannot be remedied by a curative statute: *McReynolds v. Longenberger*, 57 Pa. St. 13. See *Brady v. Offut*, 19 La. An. 184; *McCready v. Sexton*, 29 Iowa 356. Where there is no assessment or levy a tax-judgment cannot be rendered under a statute curing defects in tax proceedings: *Wells v. McHenry*, 7 N. D. 246. An assessment was invalid where no attempt was made to assess the property except by a board which took action under a void statute: *Evansville & I. R. Co. v. Hays*, 118 Ind. 214. All proceedings on a void assessment are void (citing Florida cases): *Flanagan v. Dunne*, 105 Fed. Rep. 828. That there can be no tax without an assessment is true as a general proposition; but that one may make his own assessment by his return of his mortgages for taxation, see *Commonwealth v. McKean County* (Pa.), 49 Atl. Rep. 982.

¹ Though the provisions of a statute as to the collection of taxes are invalid, yet if the provisions for assessment are invalid they may be enforced: *Commonwealth v. Taylor*, 101 Ky. 325.

contents ought to be observed with particularity.¹ They are prescribed in order to secure equality and uniformity in the contributions which are demanded for the public service, and if officers, instead of observing them, may substitute a discretion of their own, the most important security which has been devised for the protection of the citizen in tax cases might be

¹*Slaughter v. Louisville*, 89 Ky. 112. An assessment made within the time and in the manner prescribed by the statute is indispensable in proceedings to enforce the collection of taxes: *St. Louis, L. M. & S. R. Co. v. Miller*, 67 Ark. 498. Under a system of taxation based upon an official assessment or valuation of property, no tax can lawfully be laid until the valuation has been made in substantial conformity to the statute governing such valuation: *Sweigle v. Gates*, 9 N. D. 538. To be valid, an assessment and levy must be made strictly as provided by law. So where the assessment, equalization, and levy were made under the law pertaining to cities of the fifth class, instead of that pertaining to cities of the fourth class, in which latter class the city in question had just before been incorporated, they were held invalid: *Dranga v. Rowe*, 127 Cal. 506. The provisions of a statute respecting the classification of taxable property for taxation are mandatory: *State v. Thomas*, 18 Utah 86. Under a statute providing that the board of supervisors shall, at its meeting in January in each year, classify the several descriptions of property to be assessed, and shall deliver to each assessor, on or before January 15th, a certificate of such classification, a classification made at the regular session in June is illegal: *McCutcheon v. Lyon Supervisors*, 95 Iowa 20. A statutory requirement as to segregating the real and personal property in each district of a city is not abrogated by the fact that to list property otherwise would be more convenient, and render the

assessment and collection of taxes less expensive: *State v. Abrahams*, 6 Wash. 372. Taxes assessed by percentages, instead of in specific amounts, as required by statute, are void: *Wells County v. McHenry*, 7 N. D. 246. Where the statute requires a map in connection with the assessment of city property, the assessment is invalid if a map is dispensed with: *Lalor v. New York*, 12 Daly 235. If the statute requires a municipal assessment to be made by ordinance, an ordinance is indispensable: *People v. Lee*, 112 Ill. 113. Where the record shows that a savings bank has capital stock which is subject to taxation, no recovery of the tax can be had if the record does not show that the assessment and levy were such as the law required: *Westminster v. Westminster Savings Bank*, 92 Md. 64. Procedure in assessment of urban property held in accordance with the statute: *Russell v. Lang*, 50 La. An. 36. In Kansas the assessment roll should contain the names of all persons who should return personal property assessments, even though they have no property not exempt from taxation: *State v. Phillips County*, 26 Kan. 419. Where taxes on local railroad property are not extended in a separate book as required by the statute, they cannot be collected: *State v. St. Louis & S. F. R. Co.*, 117 Mo. 1. And a statutory requirement that the board of assessors of railroad property certify the items and value "with all the facts" to the board of examiners is mandatory: *Harris v. State*, 96 Tenn. 496.

rendered valueless. The assessment must, therefore, be made by the proper officers, or it will be void;¹ and if a board of review empowered to appoint the assessors and afterwards to review their work should appoint any of its own members to that office, the appointment would be void, and an assessment

¹See *ante*, pp. 426-428; *Elyton Land Co. v. Birmingham*, 89 Ala. 477; *In re Taxation of Mining Claims*, 9 Colo. 635; *Tampa v. Kaunitz*, 39 Fla. 684; *Tampa v. Mugge*, 40 Fla. 326; *Gray v. Stiles*, 6 Okl. 455; *State v. Cheraw & D. R. Co.*, 54 S. C. 564. An *ad valorem* assessment cannot be made by the legislature: *People v. Hastings*, 29 Cal. 449; *People v. Union* 31 Cal. 138; *In re Taxation of Mining Claims*, 9 Colo. 635; *Slaughter v. Louisville*, 89 Ky. 112; *In re Union Coll.*, 129 N. Y. 308. See *Albany, etc. Bank v. Maher*, 9 Fed. Rep. 884; *Attorney-General v. Leavenworth*, 2 Kan. 61. It is said in *Faust v. Building Assoc.*, 84 Md. 186, that the legislature may make a levy of a tax and the assessment, without the intervention of any officer. Where a statute creating a levee district provided a scheme for collecting the taxes authorized in the act, equity has no jurisdiction to assess and collect them: *Woodruff v. State*, 77 Miss. 68. In California a tax, in order to be valid, must rest upon an assessment duly made by an assessor chosen by the people of the district assessed: *People v. Hastings*, 29 Cal. 449. See *Ferris v. Conover*, 10 Cal. 589. A school or other township assessment by county assessors is void: *People v. Hastings*, 29 Cal. 449; *People v. Sargeant*, 44 Cal. 430; *Williams v. Corcoran*, 46 Cal. 553; *Reiley v. Lancaster*, 39 Cal. 354. A school tax must be assessed by district assessors: *People v. Railroad Co.*, 49 Cal. 414. See for a like point, *Mason v. Johnson*, 51 Cal. 612; *Smith v. Farrelly*, 52 Cal. 77. See *Granger v. Parsons*, 2 Pick. 392. Under a statute providing for the appointment and

term of office of borough assessors, and giving to them the same powers and duties as township assessors, and providing for the appointment to the borough of its proportion of the state and county taxes, all taxes to be assessed on property within a borough must be assessed by the borough assessor: *State v. Segoine*, 53 N. J. L. 339; *State v. Simpkins*, 53 N. J. L. 582. The fact that the officer by whom an assessment is made is a member of a firm to which property is adjudicated at a tax-sale does not invalidate it: *New Orleans Pac. R. Co. v. Kelly*, 52 La. An. 1741. Inasmuch as a person who is superintendent of special improvements and city collector would have a direct interest in increasing the amount of the assessments, he is disqualified from acting as commissioner of assessments, and if he acts as such the assessment is void: *Chase v. Evanston*, 172 Ill. 403. And one owning property to be assessed for a public improvement is so disqualified: *Shreve v. Cicero*, 129 Ill. 226. See, also, *Hunt v. Cicero*, 60 Ill. 184. An assessment in pursuance of the grant and apportionment of the state tax would be valid, though made by the assessors of a town without a warrant from the state treasurer, their authority not being dependent thereupon. And if the assessors see fit to complete the assessment, including the state tax for the current year, and commit the same to the collector before the issue of the state treasurer's warrant, the taxpayer cannot complain: *Rowe v. Friend*, 90 Me. 241, following *Alvord v. Collin*, 20 Pick. 418.

made by the appointees would be illegal.¹ So the assessment will be void if the assessors delegate to a clerk the office of making it;² though if he merely makes it in the first instance, and the assessors examine and supervise the work as it progresses, and adopt it when completed, it may be sustained.³ An assessment of land cannot rest in parol, for a definite record evidencing official action is essential.⁴ And if, when an annual

¹Hawkins v. Jonesboro, 63 Ga. 527. The duty and function of assessment cannot be shared by any officer to whom it is not granted by the language of the statute: Gray v. Stiles, 6 Okl. 455. If a board of supervisors which has no authority to increase an assessment shall assume to do so, and taxes shall be levied upon the increased assessment, the taxes will be void: Rood v. Mitchell, 39 Iowa 444. An assessment is not invalidated by the fact that the property was added by the assessor to the inventory of the taxpayer's estate at the direction of the board of equalization: Ferris v. Kemble, 75 Tex. 476. An order of the board of equalization finding that a bank has omitted property from the list of its taxable property, and should be assessed thereon, and directing the assessor to add such property to its assessment, is not an attempt by the board to add property to the list and exercise assessors' powers, but is a direction that the assessors make such addition, though the order specifies the value of the property to be added; and it is authorized by a statute requiring the assessor, at the request of the board, to list and assess property which he has failed to assess: Farmers' & M. Bank v. Board of Equal., 97 Cal. 318. The assessor's opinion that the acts of the state board of tax commissioners in changing valuations on the assessment roll were void did not excuse him from assessing the taxes according to such changed valuations: State Tax Com'rs v. Quinn, 124 Mich. 491.

²Assessors should not permit assessments to be made by others. Their sworn duty is to value property themselves: Merchants' Mut. Ins. Co. v. Board of Assessors, 40 La. An. 371. The computation and entry of the amount to be levied are a judicial duty which cannot be delegated to third persons, to be performed out of the presence of the board, or without its supervision: People v. Hagadorn, 104 N. Y. 516. An assessment roll, made out and certified to in the supervisor's name by a neighbor of the supervisor at his request to copy the roll of the previous year, is invalid: Paldi v. Paldi, 84 Mich. 346. An assessor has no authority to appoint a deputy unless expressly authorized by statute: Farrington v. New England Ins. Co., 1 N. D. 102. But if the statute allows the appointment of deputies, a deputy may make the assessment: Meek v. McClure, 49 Cal. 623. Where the board, to make the assessment upon railroad property, was composed of the county clerks of the counties through which the road ran, a deputy clerk could act in his principal's absence: Missouri River, etc. A. Co. v. Morris, 7 Kan. 210.

³Tampa v. Mugge, 40 Fla. 326; Snell v. Fort Dodge, 45 Iowa 564. Unfinished assessment rolls completed by assessor's successor, held valid: Pensacola v. Bell, 22 Fla. 469; Farrington v. New England Ins. Co., 1 N. D. 102.

⁴Sims v. Warren, 68 Miss. 447; Power v. Powdle, 3 N. D. 107; Sheets

assessment is required, the officer merely copies for one year the roll for the preceding year, the assessment will be invalid.¹ The particular requirements of the assessment will be noticed further on, but it may be said here — what there will be occasion to repeat in other connections — that mere irregularities in making it, which cannot be injurious, will be overlooked.²

v. Paine (N. D.), 86 N. W. Rep. 117. Property is not assessed, though on a verified list, until it is set down in an assessment roll, as required by the statute: *Oregon & W. M. Sav. Bank v. Jordan*, 16 Or. 113. It is essential that property be entered for valuation on the proper roll, and that the location and valuation of the same should be shown: *Dykes v. Lockwood Mortg. Co.*, 57 Kan. 416.

¹ *People v. Hastings*, 29 Cal. 449; *Lebanon v. Railroad Co.*, 77 Ill. 539; *Mason v. Whitney*, 1 Pick. 140; *Woodman v. Auditor-General*, 52 Mich. 28; *Johnson v. Royster*, 88 N. C. 194; *Greenough v. Fulton Coal Co.*, 74 Pa. St. 486. See *Thurston v. Little*, 3 Mass. 429; *Paldi v. Paldi*, 84 Mich. 346.

² *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12; *Missouri River, etc. R. Co. v. Morris*, 7 Kan. 210; *South Platte Land Co. v. Crete*, 11 Neb. 344. See *Smith v. Leavenworth County*, 9 Kan. 296; *Missouri River, etc. R. Co. v. Blake*, 9 Kan. 489. The words, "To all owners and claimants, known and unknown, in A. township," in the heading of an assessment roll, are an idle recital, and do not vitiate the assessment: *Bosworth v. Webster*, 64 Cal. 1. The legality of a special assessment against certain city lots for expense of constructing sidewalks is not affected by the fact that in the tax-list the amount of the assessment appeared in a column headed "Delinquent Road Tax," in the absence of any claim by the owner of the lots that he had been misled or prejudiced by the alleged error in the heading: *Scott County*

v. Hinds, 50 Minn. 204. An assessment valid under the act in force at the time it was made is not invalidated by the tax commissioners' incorrectly describing, in their notice to the property owner, the statute under which they had assumed to act in making the assessment: *People v. Barker*, 35 App. Div. (N. Y.) 486. Where personalty is enumerated on the roll specifically, instead of in gross, as, in certain circumstances, it should be, the specific description is surplusage and does not avoid the assessment: *Comstock v. Grand Rapids*, 54 Mich. 641. Under the Illinois statute where it does not appear that the assessor could ascertain the exact nature of the personalty, an objection that the personalty constituting the assessment was not specifically designated has no force: *King v. People* (Ill.), 61 N. E. Rep. 1035. An assessment upon the personal property of a corporation is void if it fails to show that it is limited to the kind of personalty for which alone the corporation can, under the statutes, be taxed: *Manufacturing Co. v. Newell*, 15 R. I. 233; *Rumford Chem. Works v. Ray*, 19 R. I. 302; *Newport Reading Room's Petition*, 21 R. I. 440. Where the values of realty and personalty were entered separately on the assessment roll and added together, and the tax apparently computed on their sum, the invalidity of the assessment of the real estate does not render the whole assessment void: *Mowry v. Slatersville Mills*, 20 R. I. 94. The assessment of a growing nursery-stock as personalty, though erroneous, is not void:

The legislature has the sole power of determining what machinery shall be exercised in carrying out the provisions of the law authorizing the imposing of taxes,¹ and it may prescribe the mode of assessing property in a city of a certain class, as neither the city nor the citizen has a vested right to have prop-

Wilson v. Cass County, 69 Iowa 147. Assessor's failure to return realty and personalty in one book does not invalidate tax: *State v. Bank of Neosho*, 120 Mo. 161. That the assessors classified under two heads city lots and the improvements thereon did not invalidate the assessment roll; and where the state board considered the two heads as a single class, and so equalized them, its action was valid: *Dayton v. Multnomah County*, 34 Or. 239. An assessment was not invalidated because the record of it gave plaintiff's tax at a less amount than that correctly stated in the list committed to the collector: *Rowe v. Friend*, 90 Me. 241. Assessing rolling-stock, etc., of an elevated road as "corporation stock," being a mere mistake of classification, will not defeat the assessment: *Robbins v. Magoun*, 101 Iowa 580. An assessment of bank stock in the bank's name instead of to the stockholders was held to be an irregularity merely, where, as the names of the stockholders and the correct number of shares owned by each was given, the intention clearly appeared to tax the shares and not the capital stock: *Western Ins. Co. v. Murray* (Ariz.), 56 Pac. Rep. 728. It is no ground for annulling an assessment on shares of bank stock that the list of shareholders appears in a different part of the assessment book from that where the amount is noted: *Castles v. New Orleans*, 46 La. An. 542. A taxpayer cannot complain that taxables who owned no property have been listed in a separate book: *Crecelius v. Louisville* (Ky.), 49 S. W. Rep. 547. A failure to

enter upon the township assessment roll the amount of railroad property and tax apportioned thereto is a mere irregularity: *Sioux City, etc. R. Co. v. Osceola County*, 45 Iowa 168. And see *Wilson v. Weber*, 96 Ill. 454. Cases of error or mistake in stating name of corporation assessed: *State v. Sloss*, 87 Ala. 119; *Lake County v. Sulphur Bank, etc. Co.*, 66 Cal. 17; *Chicago, B. & Q. R. Co. v. Kelley*, 105 Iowa 106; *Gratwick, etc. Lumber Co. v. Oscoda*, 97 Mich. 231; *State v. Diamond Valley, etc. Co.*, 21 Nev. 86. As to curing error in name of person assessed, see *ante*, p. 525. A city assessment is not invalidated by slovenly entries thereof by the tax-collector: *Santa Barbara v. Eldred*, 108 Cal. 294. As to what irregularities will defeat an assessment the following cases may be consulted: *Huntington v. Central Pac. R. Co.*, 2 Sawy. 503; *Albany City Nat. Bank v. Maher*, 19 Blatchf. 175; *Smith v. Davis*, 30 Cal. 537; *Shimmin v. Inman*, 26 Me. 228; *Bradley v. Ward*, 58 N. Y. 401; *Willey v. Scoville's Lessees*, 9 Ohio 44. What will not avoid: *Maple v. Vestal*, 114 Ind. 325; *Gulf R. Co. v. Morris*, 7 Kan. 210; *Smith v. Leavenworth County*, 9 Kan. 296; *Morrill v. Douglass*, 14 Kan. 294; *Bird v. Perkins*, 33 Mich. 28; *Callum v. Bethany*, 42 Mich. 457; *Michigan Dairy Co. v. McKenlay*, 70 Mich. 574; *Miller v. Hurford*, 13 Neb. 13; *McClure v. Warner*, 16 Neb. 447; *Merriam v. Coffee*, 16 Neb. 450; *Hallo v. Helmer*, 12 Nev. 87; *Burlington, etc. R. Co. v. Saline County*, 12 Nev. 396; *Marshall v. Benson*, 48 Wis. 558.

¹ *Board of Education v. Kingfisher*, 5 Okl. 82.

erty assessed in a particular way.¹ In South Carolina a statute for the assessment of village property has been said not necessarily to mean an incorporated village, and a summer resort may be a village for the purpose.²

Date of the assessment. Assessments are made periodically, and in many of the states every year.³ The customary regulation is that the assessment shall be made or completed on a certain day, or that it shall be made as of a certain day.⁴ This

¹ *Heily v. City Council*, 7 Wash. 29.

² *Martin v. Tax Collector*, 1 Speers 343.

³ The year for which an assessment is made is shown with sufficient certainty by the date of the tax-collector's warrant: *Drew v. Morrill*, 62 N. H. 23. It is competent for the legislature to provide that certain railway property shall be assessed annually, while ordinary realty is assessed but once in two years; the fact that it is denominated "real estate" not changing its true character: *St. Louis, I. M. & S. R. Co. v. Worthen*, 52 Ark. 529. A constitutional provision that property shall be valued for taxation every fifth year will not prevent the legislature's providing for more frequent assessments: *Ex parte Lynch*, 16 S. C. 32. And where, notwithstanding such constitutional provision, railroad property, including the land forming part thereof, was assessed annually, there was no such discrimination against railroads as constituted a denial of the equal protection of the laws: *Chamberlain v. Walter*, 60 Fed. Rep. 788. It has been held in Iowa that where by statute an assessment was to be made in every odd-numbered year, and was duly made for a township accordingly, and a city was then carved out of the township, there was no authority of law for making a new assessment in the even-numbered years except as to omitted property:

Snell v. Fort Dodge, 45 Iowa 564. See *Richards v. Rapallo County*, 48 Iowa 507; *Hilgenberg v. Wilson*, 55 Ind. 210. Under the Louisiana act of 1847 an assessment of real estate not complained of when made could not be changed for five years except to add for improvements or to deduct for destruction: *State v. Board of Assessors*, 31 La. An. 806.

⁴ An assessment is deemed to have been made the day following the last day on which the taxpayers are notified to bring in an account of their ratable estate: *McAdam v. Honey*, 20 R. I. 351. An assessment is not invalid because not completed during the year for which it was made: *Pensacola v. Bell*, 22 Fla. 469; *Stieff v. Hartwell*, 35 Fla. 606. Where no injury is caused by the delay, the assessor's failure to complete the assessment for delivery to the county clerk by the date fixed by the statute will not render the tax invalid: *Breeze v. Haley*, 10 Colo. 5. Statutes directing that property shall be assessed before a day named, or that the assessment shall be made and returned by a certain time, are regarded as directory only: *Anderson v. Mayfield*, 93 Ky. 230; *Boody v. Watson*, 64 N. H. 162. An assessment of taxes specially required by statute may be made after the time prescribed therefor, the same to be made as of the time it would have been made had the law been observed: *School Dist. v. Cumberland*,

fixes the liability of persons and property to taxation for the year.¹ There are some inconveniences and inequalities resulting from this, but some regulation of the kind is indispensable. A force of tax officers cannot be kept employed for the year in watching the transfers of property, the movements of persons, and vicissitudes of business, in order to equalize the charges

21 R. L. 576. Where the tax-receiver, if dissatisfied with a return made to him on oath, is required to assess the property within thirty days after the return is made, he cannot do it afterwards, nor can any court, for any reason, confer that power upon him: *Bohler v. Verdery*, 92 Ga. 715. The tax to be levied for the payment of a judgment, in addition to the regular taxes, must be assessed and collected at the same time and in the same manner with the general assessment of taxes, and not by a special and distinct assessment at another time: *State v. Assessors*, 51 N. J. L. 279. Under a statute providing that city trustees shall provide by ordinance a system for the assessment, levy, and collection of city and town taxes which shall conform as nearly as possible to the provisions of the state laws "except as to the times for such assessment," etc., it is competent for the trustees to fix any time they may see fit for assessing, etc.; and the fact that the time fixed coincides with that fixed for the levy of state and county taxes does not affect the validity of the ordinance: *San Luis Obispo v. Pettit*, 87 Cal. 499. Under the Maine statute assessments for laying out roads are to be made by the county commissioners at the same regular session at which the location of the road is filed; the object being to prevent their being made at an adjourned term of such regular session: *Mansur v. County Com'rs*, 83 Me. 514. Where a statute provides that taxes against railroad property are to be levied "at a regular term

of" the county court, if the court opens a regular term and adjourns from day to day, or for a number of days, the adjournments are a part of the regular term: *State v. Hannibal & St. J. R. Co.*, 101 Mo. 136. Where taxes against a railroad company were not assessed at the time required by law, because of the company's claim that it was exempt, it cannot escape liability because they were not levied at the prescribed time: *Baltimore, C. & A. R. Co. v. Commissioners* (Md.), 48 Atl. Rep. 853.

¹ *People v. Commissioners*, 104 U. S. 466; *Distilling, etc. Co. v. People*, 161 Ill. 101; *Howell v. Scott*, 44 Kan. 247; *Whitaker v. Brooks*, 90 Ky. 68; *Bierly v. Quick Run & O. R. T. R. Co.* (Ky.), 29 S. W. Rep. 874; *Home Ins. Co. v. Board of Assessors*, 48 La. An. 451; *Southern Ins. Co. v. Board of Assessors*, 49 La. An. 401; *Martin Co. v. Drake*, 40 Minn. 137; *Clark v. Norton*, 49 N. Y. 243; *Overing v. Foote*, 65 N. Y. 263; *State v. Minneapolis & N. Elevator Co.*, 6 N. D. 41; *Mercur Gold, etc. Co. v. Spry*, 16 Utah 222; *Anglo-Am. Ins. Co. v. District of Columbia*, 5 Mackey 422. Property not in existence or not in the state at the time the assessment is taken cannot be taxed for the year: *People v. Kohl*, 40 Cal. 127; *Wangler v. Black Hawk County*, 56 Iowa 384; *Colbert v. Lake Supervisors*, 60 Miss. 142; *Godfrey v. Wright*, 8 Okl. 151. For questions arising where one has moved into the state within the year, see *White v. State*, 51 Ga. 252; *Johnson v. Lyon*, 106 Ill. 64.

upon them; periodical assessments, if they produce injustice in one case, may correct it in the next, and on the whole are likely to be fair. At any rate, they constitute the best regulation the law can establish. "In the imposition of taxes, exact and critical justice and equality are absolutely unattainable. If we attempt it, we might have to divide one year's tax upon a given article of property among a dozen different individuals who owned it at different times during the year, and then be almost as far from the desired end as when we started. The proposition is utopian. The legislature must adopt some practicable system;"¹ and this practicable system is found to be the one which has been indicated. Every person is therefore to be taxed for the year upon his personalty, estimated as of the time of the assessment, and every parcel of real estate according to its value as set down in the proper list or roll. Changes in the ownership of property, or in the value after the periods of assessment, cannot be taken notice of in taxation until the time for a new assessment has arrived. This is the general rule.²

¹ *Shaw v. Dennis*, 10 Ill. 505, 518. The assessment dates from the time fixed by the statute. After it is made and notice given as required by the statute it is not competent to change names, or put new names upon it for taxation: *Clark v. Norton*, 49 N. Y. 243; *Overing v. Foote*, 65 N. Y. 263. But in some states this is expressly provided for (see *Stockman v. Robbins*, 80 Ind. 195; *State v. Howard*, 80 Ind. 466), though the persons whose names are put on must be notified personally. In Nebraska one is taxable on moneys received received for securities sold after the tax-year has begun: *Jones v. Seward County*, 10 Neb. 154.

² *Board of Com'rs v. Wilson*, 15 Colo. 90; *Howell v. Scott*, 44 Kan. 247; *State v. Hardin*, 34 N. J. L. 79; *State v. Jersey City*, 44 N. J. L. 156; *Eagle River v. Brown*, 85 Wis. 76. It is no objection to the assessment of property as of a given date that the property has since then ceased to exist: *Shelby County v. Mississippi & T. R.*

Co., 16 Lea 401. Not the average amount of stock on hand during the year, but the amount on hand at the time of assessment, is taxable: *Pennsylvania Coal Co. v. Porth*, 63 Wis. 77. Under a statute requiring a mortgage to be assessed to the person who owned it on the first Monday of March, the subsequent assignment thereof by the person who owned it on that day did not relieve him from liability for taxes: *San Gabriel Valley Land, etc. Co. v. Witmer Bros. Co.*, 96 Cal. 623. Assessment of bank stock in name of person appearing on list furnished by bank held valid as against real owner to whom shares were transferred before the assessment was made: *People v. Barker*, 87 Hun 194. One is to be taxed where he resides on the day fixed by statute for taking the assessment, though set off into another town before it is completed: *Harmon v. New Marlborough*, 9 Cush. 525. But if he moves out of the town before the day fixed for its completion, he cannot be taxed for

The rule may undoubtedly be varied by statute,¹ and in some states there are provisions for placing upon the roll property which was overlooked when the assessment was made;²

his personalty therein: *People v. Chenango Supervisors*, 11 N. Y. 563; *Ware v. First Parish, etc.*, 8 Cush. 267. In Vermont a person resident in a school district at the time of listing, and properly listed there, remains liable on the list while it continues in force, notwithstanding he has subsequently removed from the district: *Woodward v. French*, 31 Vt. 337; *Walker v. Miner*, 32 Vt. 769; *Ovitt v. Chase*, 37 Vt. 196. Where plaintiff had a place of business in Boston every year from first of December to 1st of March, but none on 1st of May when assessment was to be made, held, that he was not taxable in Boston: *Field v. Boston*, 10 Cush. 65. The fact that a debt is contracted while one is an inhabitant does not justify a personal tax upon him in respect of it, after he has ceased to be such: *Dow v. First Parish*, 5 Met. 73. When the capital and machinery of a manufacturing establishment have been actually employed for part only of a year, an assessment for the whole of the year is erroneous: *Electric Traction, etc. Co. v. New Orleans*, 45 La. An. 1475.

¹There is no principle which forbids the state from taking the whole period of a business year already past as the best means of ascertaining how much the taxpayer shall be assessed on taxable property, and how much shall be deducted for his non-taxable federal and state securities: *Shotwell v. Moore*, 129 U. S. 590. Statutes authorizing the county board to increase the assessment of property on the erection of valuable improvements thereon, and authorizing the tax-collector to assess and collect taxes on land that has become liable therefor since the last assessment, are valid: *Board of Su-*

pervisors v. Tate, 78 Miss. 294. Where land is assessed, and a valuable mill is afterwards erected thereon, and it is reported as an additional assessment by the tax-collector, an assessment thereon is not void because the collector gave in the mill as personal property: *Ibid.* Deterioration in the value of land caused by the usual overflow of a river is not a deterioration "by any casualty" within a statute authorizing a reduction of assessment for such a cause: *Forsdick v. Board of Supervisors (Miss.)*, 25 South. Rep. 294.

²"If assessable property has been omitted from the assessment books or has escaped assessment where it ought to have been assessed, the fact that it has not been discovered, valued, and placed upon the assessment books until after the levy has been made, cannot release it from paying taxes on account thereof, and cannot defeat the right of the state or of the municipality to demand and collect those taxes:" *Hopkins v. Van Wyck*, 80 Md. 7. In that case the appeal-tax court was held to have power to add to the finished assessment-roll personal property shown by the inventory of a decedent's estate to have been omitted from such roll for the current year. Property omitted from the roll may still be taxed though it has since changed hands: *New Orleans v. Railroad Co.*, 35 La. An. 679. An additional assessment for personalty discovered after the tax-warrant had been issued is not a new tax: *Harwood v. North Brookfield*, 130 Mass. 561. Where a statute provides for the assessment of an additional tax upon property "discovered" by the board of assessors to have been omitted from the last assessment, private informa-

and sometimes the authority goes so far as to allow of the

tion communicated to one member of the board is not such discovery; the board must be satisfied of the omission: *Noyes v. Hale*, 137 Mass. 266. An assessment of escaped taxes which recited that the assessor had assessed the following described property: "Stocks and bonds and money hoarded or on deposit subject to cheque, draft, or order, or in safety deposit box, safe or vault, or elsewhere; moneyed capital, money lent, solvent credits, or credits of value in the aggregate of the value of the sum of \$150,000," was held sufficient: *State v. Kidd*, 125 Ala. 413. As a taxpayer has peculiar knowledge of the existence of his indebtedness and its extent, the burden is on him, when sued for escaped taxes, to show, if he seeks to set off an indebtedness, that such indebtedness existed on the first day of January: *Alabama Mineral Land Co. v. State*, 126 Ala. 90. The purpose of the Arkansas statute requiring the assessment of lands not on the assessment list for the current fiscal year to be certified to the clerk was to get the lands upon the tax-books with a view to taxation for the current future years, and not to suspend the proceedings by bill in equity, given by the act, for the collection of back taxes: *St. Louis, I. M. & S. R. Co. v. State*, 47 Ark. 323. Under the Colorado statute providing that any property omitted from the tax-list through mistake or oversight shall be subject to assessment for all back taxes, property entered on such tax-list, but upon which the tax levies were not extended, is liable for such unextended tax: *Aggers v. People*, 20 Colo. 348. In Illinois it is held that if an assessor discovers that personal property has escaped his notice, after the return of his books, he may then assess it, if in time for the taxes to be extended thereon:

Farmers' M. Bank v. Vandalia, 57 Ill. Ap. 681. Under the Indiana statute making it the duty of the county assessor to list and assess upon the auditor's books any omitted property that he may discover at any time during the year, he need not bring the matter before the county board of review before the property is placed on the tax-duplicate: *Deniston v. Terry*, 141 Ind. 677; see *Co-operative B. & L. Assoc. v. State* (Ind.), 60 N. E. Rep. 146. The county assessor may list omitted property for taxation although the omission resulted not through the fault of the owner — he having delivered a statement thereof to the town assessor — but through the failure of the board of review to make an assessment: *Hunter Stone Co. v. Woodard*, 152 Ind. 474. Where there was no other assessment against the owner of omitted property, the tax in respect of it is not invalidated by the county assessor's failure to file in the auditor's office, as required by law, a statement of his reasons for placing it on the list: *Ibid.* The fact that a person swore to a tax-list in due form, returning certain credits and money lent, and that such valuation was approved by the assessor, returned to the auditor, and approved by the county board, will not relieve from taxation property omitted from the list: *Reynolds v. Bowen*, 138 Ind. 434. As to the notice required in Indiana, see *Florer v. Sheridan*, 137 Ind. 28; *Reynolds v. Bowen*, 138 Ind. 434. That the omitted property was discovered in a search by the county auditor made under a void contract with the county commissioners for an expected reward gave the owner no right to an injunction against collection of the tax: *Vandercook v. Williams*, 106 Ind. 345. Under the Iowa statute of

placing of taxables upon the roll which have been omitted

1880 the clerk of the board of supervisors had power to assess real estate omitted by the assessor: *Robb v. Robinson*, 66 Iowa 500. The action of the county judge in Kentucky in assessing property for taxation is ministerial and not judicial, and his refusal to assess certain property upon the application of the taxing officer is not *res adjudicata* or a bar to a subsequent application as to the same property: *Baldwin v. Shine*, 84 Ky. 502. In Louisiana the statutory provision which empowers the city council of New Orleans to revise assessments does not apply to the listing of property omitted from the rolls; that is otherwise provided for: *Mercier v. New Orleans*, 38 La. An. 958. The Michigan statute providing for additions to the assessment roll by boards of review does not give the assessor authority to make such additions: *Common Council v. Smith*, 99 Mich. 507. While the assessment rolls are in the assessor's hands a notice by the state revenue agent of the discovery of property which has escaped taxation should be served on him, and if served on the collector is ineffectual to render the latter liable for failure to collect the taxes on such property: *Adams v. Brennan*, 72 Miss. 894. The Nebraska statute authorizes the county clerk, where lands in his county have not been assessed, to "enter the same upon the assessment roll and assess the value:" *Elkhorn L. & T. Co. v. Dixon County*, 35 Neb. 426. In New Mexico, the tax collector, learning of property in the county omitted from the list, can assess such property as the assessor might have assessed, enter the assessment, and extend the levy: *United States Trust Co. v. Territory (N. M.)*, 62 Pac. Rep. 987. Under the Ohio statute requiring a county au-

ditor to assess property not returned for taxation the auditor acts ministerially, and not judicially; and it is no objection to the validity of such proceedings that he is given by the law a percentage of the tax collected: *Oskamp v. Lewis*, 103 Fed. Rep. 906. In the same state it is held that a certified copy of a decedent's estate filed in the probate court by the executor is competent evidence to show omissions in the returns of the deceased, and, in the absence of anything to the contrary, may warrant the auditor in making additions as authorized by the statute: *Gager v. Prout*, 48 Ohio St. 89. Where property located in one county at the time for making the assessment was withheld from assessment, and was subsequently removed to another county, it could lawfully be taxed in the latter: *Boyd v. Wiggins*, 7 Okl. 85. In Pennsylvania it has been decided that a second appraisal of property omitted from the first appraisal for collateral inheritance tax is void, the commonwealth's remedy being by appeal: *Money-penny's Estate*, 181 Pa. St. 309. In Tennessee the collector of county taxes is made assessor for the purpose of listing all property wrongfully omitted from the roll, which must be valued as of January 10th. next preceding: *Otis v. Boyd*, 8 Lea 679; *Chesapeake, O. & S. W. R. Co. v. State*, 16 Lea 688. But the county trustee is the proper officer to assess for county taxation the property of a railroad company which the regular assessors have omitted to assess: *Shelby County v. Mississippi & T. R. Co.*, 16 Lea 401; *Chesapeake, O. etc. R. Co. v. Lauderdale County*, 16 Lea 688. But it is the comptroller's duty to "back assess" omitted "distributable" railroad property both for state, county, and municipal taxa-

for several years, and assessing them for each of the years omitted.¹

tion, and no county trustee or municipal tax collector has such authority: *State v. Nashville & D. R. Co.*, 96 Tenn. 385. The provisions of the Tennessee statute requiring collectors and assessors "to assess all property which, by mistake of facts, has not been assessed," means only that that shall be done which should have been done at the time fixed by law, and that property shall be assessed as it should have been assessed on the day on which, under existing laws, property is assessable. Gains thereafter accruing go over to the assessment of the next year: *Chesapeake, O. etc. R. Co. v. State*, 13 Lea 348. It devolves upon the taxpayer, when he is assessed upon omitted property, or when the assessment is ancillary to that of the regular assessor, to show that he had not previously been allowed his regular exemption: *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406. That re-assessment of omitted property on taxpayer's complaint cannot be made after ten days, see *Warner Iron Co. v. Pace*, 89 Tenn. 707.

¹See *ante*, pp. 492-494, 511; *Vicksburg, etc. R. Co. v. Dennis*, 116 U. S. 665; *Maguire v. Mobile County*, 71 Ala. 401; *State v. Louisiana Savings, etc. Co.* 32 La. An. 1136. The omission of taxing officers to assess certain property in previous years cannot control the power of the legislature: *Hibernian Soc. v. Kelly*, 28 Or. 173. But in Arkansas a tax-deed is void which recites that an assessment was made in 1867 for the taxes of 1859-60 and 1861: *Jacks v. Dyer*, 31 Ark. 334. For the assessment, under the Arkansas "overdue tax-act" of 1881, of property which has escaped taxation in former years, see *St. Louis, I. M. etc. R. Co. v. State*, 47 Ark. 323; *Williamson v.*

Mimms, 49 Ark. 336; *St. Louis, I. M. & S. R. Co. v. Miller County*, 67 Ark. 498. Under the code provision in California that any property discovered by the assessor to have "escaped assessment" for the last preceding year, if such property is still owned or controlled by the same person who owned or controlled it the previous year, may be assessed at double its value, money deposited with a county treasurer by order of court in a pending case may be doubly assessed if it "escaped" assessment the year before: *San Luis Obispo v. Pettit*, 87 Cal. 499. Where an assessment is invalid the property has "escaped assessment:" *Ibid.* The Illinois statute providing that if any realty or personalty shall be omitted in the assessment it shall be listed and assessed by the assessor when discovered does not apply to the case of land which has been listed, assessed, and placed on the tax-books, although some of the taxes levied thereon have not been extended by the county clerk: *Hayward v. People*, 156 Ill. 84. Nor does it authorize an assessor to assess a taxpayer for credits alleged to have been omitted from his assessments for former years, when such taxpayer was assessed for a certain amount of credits for those years, since, as only the balance of credits after deducting liabilities is assessed, such an assessment would simply be increasing the amount of a former assessment: *Allwood v. Cowen*, 111 Ill. 481. But an assessment by the board of review of credits as omitted from assessments for former years cannot be restrained on the ground that the assessors might have found the taxpayer's credits and debts equal, where in such former years no schedule of credits and debts had been filed:

Taxpayers' lists.¹ In some of the states it has been deemed advisable to provide by law that persons resident within

Sellars v. Barrett, 185 Ill. 466. It is held in Indiana that to deduct a voluntary payment made for taxes on omitted property from the assessment on such property is error where the payment has been credited in computing the assessment: *Gallup v. Schmidt*, 154 Ind. 196. In that case an assessment for back taxes on a testator's omitted property was held correct when computed on the probable valuation of the property. The provision of the Iowa statute for the taxation of omitted property is not unconstitutional as in violation of the principle of uniformity of taxation: *Galusha v. Wendt* (Iowa), 87 N. W. Rep. 512. Under such provision an action may be brought for taxes that should have been paid by a decedent as long as such decedent's executor or administrator has funds on hand out of which taxes may be paid: *Ibid.* In Kentucky the state board of valuation and assessment has implied power to assess franchises for taxes omitted in previous years: *Stone v. Louisville* (Ky.), 57 S. W. Rep. 627. Where a statute directing assessors to assess omitted property provides that no back taxes for more than three years shall be assessed against said property, the taxes of the current year are not back taxes, and are not to be considered in fixing the time referred to in the statute, even though the reassessment was made after the assessment for such current year was

made, and later in such year: *State v. New Orleans*, 105 La. 738. In Mississippi it is held to be the assessor's duty, even after action by the supervisors, to assess as property the capital stock of a corporation which has escaped taxation in former years: *State v. Simmons*, 70 Miss. 485. Where bank shares which are above par have escaped taxation they are assessable for back taxes at their actual, not the par value; but the statute does not authorize the assessment of back taxes on the surplus of a bank on which taxes have been levied and paid, though it has been taxed at an under-valuation: *Bank of Oxford v. Board of Supervisors* (Miss.), 29 South. Rep. 825. The Missouri statute providing for taxation for past years on the valuation to be adjusted and equalized, of property which "shall have been subjected to taxation" prior to the passage of the act, but shall not have been assessed, refers only to such property as before the passage of the act was subject and liable to taxation, but has escaped it through inattention of the owner, or inadvertence of the county officers: *State v. Hannibal & St. J. R. Co.*, 101 Mo. 120. A back assessment of personalty is void unless it shows on its face what specific property was omitted from the former assessment: *Cape Girardeau v. Buehrmann*, 148 Mo. 198. Where a lot omitted from the assessment of the preceding year is

¹ In Vermont there is a statutory requirement that the listers shall lodge in the town clerk's office an abstract of the personal lists of the taxpayers for their inspection. See, for decisions under this law, *Smith v. Hard*, 59 Vt. 13; *Bartlett v. Wilson*, 59 Vt. 23; *Bundy v. Wolcott*, 59

Vt. 665; *Smith v. Hard*, 61 Vt. 469; *Taylor v. Moore*, 63 Vt. 60. As to assessor's obtaining information from corporation officers, and duty of bank officers to furnish same, see *Bank of Bramwell v. County Court*, 36 W. Va. 341.

the several taxing districts shall, by a specified time, deliver to the assessor a written exhibit of their property or business for the purpose of taxation.¹ "There can be no doubt about

to be placed upon the roll with the valuation of the last year when it was assessed, if it never was on the roll it cannot be put on under the provision: *People v. Goff*, 52 N. Y. 434. In Ohio, where taxable credits have been omitted from the tax return, the county auditor may go back five years, and place the same on the duplicate for taxation: *Rheinbolt v. Raine*, 52 Ohio St. 160. In South Carolina, when property omitted from a city levy under a void ordinance exempting the same is placed upon the tax-books, the values for state and county taxes in such omitted years will control: *Garrison v. Laurens*, 55 S. C. 551. As to the provisions in Tennessee for appeals from assessments of omitted property, see *Warner Iron Co. v. Pace*, 89 Tenn. 707. As to what is sufficient *prima facie* evidence in Arizona that back taxes were properly charged against the property, see *Maish v. Arizona*, 164 U. S. 193.

¹ The owners of stock in national banks may be compelled to list them for taxation: *Commonwealth v. Jackson* (Ky.), 61 S. W. Rep. 700, citing *Scobee v. Bean* (Ky.), 59 S. W. Rep. 860. The Massachusetts law requires corporations as well as natural persons to bring in their lists: *Winnissimet Co. v. Chelsea*, 6 Cush. 477. Under the Pennsylvania statute requiring every taxable owner, whether corporate or individual, to make a sworn return to the assessors, it is the duty of all corporations, no matter under which section of the act they are taxable, to make the required return: *Pennsylvania Co. v. Board of Revision*, 139 Pa. St. 612. In Maryland corporations may be required to furnish for taxation lists

of their stockholders to all the local authorities where they severally reside: *Donovan v. Insurance Co.*, 30 Md. 155. A tobacco warehouse company, it is held in Kentucky, does not perform a public service within the meaning of the statute relating to the franchise tax, and is not required to report to the auditor: *Louisville Tobacco Warehouse Co. v. Commonwealth* (Ky.), 49 S. W. Rep. 1069. Under a statute requiring the officers of a corporation to list for taxation all the "shares of stock" held therein, and the value thereof, the capital stock must be listed by the corporate officers, and not by the individual stockholders: *Charlotte B. & L. Assoc. v. Board of Com'rs*, 115 N. C. 410. In Kentucky a trustee is not required to list personal property for city taxation where the beneficial owner resides elsewhere: *Lexington v. Fishback's Trustee* (Ky.), 60 S. W. Rep. 727. The provision of the penal code of Texas requiring the taxpayer to render his property for assessment applies not only to the property actually owned by him, but to all property held by him in a fiduciary capacity, and includes bank officials with respect to the shares, stocks, etc., owned by the individuals of the corporation: *Dounes v. State*, 22 Tex. App. 393. In Illinois it has been held that a person handling personalty for his father need not list it for taxation: *Mason v. People*, 51 Ill. App. 640. Property stored in a warehouse for which the warehouseman has issued receipts is not in his possession within the meaning of a requirement that for purposes of taxation a person shall state under oath all property belonging to, claimed by, or in the

the power of the legislature to impose upon the owner of property the personal duty of reporting it for the purpose of taxation in any form or manner it may deem best."¹ Sometimes pro-

possession or under the control or management of such person: *Weyse v. Crawford*, 85 Ill. 196. A non-resident corporation, by listing its lands with the assessor, by its local agent, and paying taxes thereon, does not exonerate itself from the penalty prescribed by the Kentucky statute for the failure of a non-resident owner of lands to file a descriptive list under oath with the county clerk: *Commonwealth v. Farmers', etc. Co. (Ky.)*, 52 S. W. Rep. 799. Such failure was not, prior to the amendment of March, 1900, atoned for by personally listing lands with the assessor: *Commonwealth v. Lauth (Ky.)*, 56 S. W. Rep. 519; see *Commonwealth v. Ellis (Ky.)*, 9 S. W. Rep. 221. The descriptive list need not be refiled each year, a single filing being sufficient as to all lands embraced therein: *Commonwealth v. Lauth (Ky.)*, 56 S. W. Rep. 519. Where the taxpayer's list is at his instance made out by the assessor, he cannot complain that the assessment was made without the list's having been furnished by him previously: *Royer Wheel Co. v. Taylor County (Ky.)*, 47 S. W. Rep. 876. Under the Kentucky statute, where a tract of land lies in two counties, each part must be reported as a separate tract to the clerk of the county in which it lies: *Commonwealth v. Tancray (Ky.)*, 52 S. W. Rep. 797. In Alabama a statute requiring every person in the state "who is liable to pay taxes" to render "a list of his taxable property to the assessors," and providing that if he does not they may call at his residence for a list of his taxables, or for the assessment of taxes due from him, was held applicable to one liable to a poll-tax only:

Carter v. Mercer, 9 Ala. 556. As to the time for non-resident's filing with the assessors a list of taxable estate, see *Hopkins v. Reading*, 170 Mass. 568. The list must be handed in before the tax is actually assessed: *Porter v. County Com'rs*, 5 Gray 365; *Otis Co. v. Ware*, 8 Gray 509. As to what is a sufficient listing in Vermont, see *Blodgett v. Holbrook*, 39 Vt. 336. In Connecticut it is held that a list sufficient as to the personal estate cannot be rejected as to that because insufficient as to the realty: *New Canaan v. Hoyt*, 23 Conn. 148. To establish an exemption of property as having been assessed already, the owner must show to the assessor under oath that the property has been assessed elsewhere: *Wilson v. Wiggins*, 7 Okl. 517. Where a statute requires a taxpayer to return an inventory of his property to the listers, it will be presumed that they placed it on the list as it was returned to them: *Adams v. Sleeper*, 64 Vt. 644. Assessments on one who furnished a list as required by statute are not void because some of the inhabitants failed to do so: *White v. New Bedford*, 160 Mass. 217.

¹ *Commonwealth v. Farmers', etc. Co. (Ky.)*, 52 S. W. Rep. 799. The Kentucky statute requiring the non-resident owner of lands in a county to file a descriptive list thereof with the county clerk, as the basis of an assessment for taxation, is constitutional: *Commonwealth v. Hollidy*, 98 Ky. 616; *Commonwealth v. Engle (Ky.)*, 52 S. W. Rep. 811. In New Hampshire a non-resident is not required to furnish an account or inventory of his personal property: *Carpenter v. Dalton*, 58 N. H. 615; *Farmington v. Downing*, 67 N. H. 441.

vision is made for notice to, or demand upon, each taxpayer that he furnish a list of his possessions,¹ and it is expected that this list shall be sufficiently full and complete to enable the

¹ Under the Montana statute providing that the assessor shall demand of "each taxpayer in the district" a list of his personal property, and, on his refusal to give it, the assessor shall list his property on information and belief, adding a penalty, the assessor has no jurisdiction to make an assessment without first demanding a list of the taxpayer or his agent, where, though not a resident of the county, the taxpayer has resident agents in charge of his property therein, and his address is known to the assessor: *Powder River Cattle Co. v. Board of Com'rs*, 45 Fed. Rep. 323. But a formal demand by the assessor on the taxpayer for a list is not necessary where an effort to make a demand was made and the taxpayer evaded furnishing the list, nor need the roll state why the list was not made: *McMillan v. Carter*, 6 Mont. 215. An assessment made on railroad property without demand of a list is void: *Northern Pac. R. Co. v. Carland*, 5 Mont. 146. A demand in writing, signed by the assessor in his official capacity, requiring a compliance with the statute, and served upon a member of a partnership, is sufficient, and the assessor need not personally swear as to the partner upon whom demand was made: *State v. Owsley*, 17 Mont. 94. Under the Massachusetts statute requiring the assessor to notify the inhabitants, at the town meeting or otherwise, to bring in lists, it was held that if a failure to give notice was relied upon it devolved on the taxpayer to show it: *Winnissimet Co. v. Chelsea*, 6 Cush. 477. The Michigan statute providing that each supervisor shall require every person of full age to make a full written

statement, under oath, of all his taxable property, is mandatory, since performance is not impracticable; mailing blank statements, with notice, being sufficient: *Turner v. Muskegon Circuit Judge*, 95 Mich. 1. But a village tax-levy will not be set aside on the ground that the assessor did not require the assessors to make sworn statements as to their property: *Gratwick, etc. Lumber Co. v. Oscoda*, 97 Mich. 221. The assessor's omission to call at an owner's office for a statement of his taxable property, and to leave a notice as provided by the statute, does not affect the validity of the assessment; such provision being directory merely: *Hazard v. O'Bannan*, 36 Fed. Rep. 854. In Maine the statutory direction that the assessors give notice to the taxpayers to bring in their lists is directory only: *Boothbay v. Race*, 68 Me. 351. Under the statute requiring a corporation to report its property to the auditor for taxation, and requiring the auditor to prescribe a form of report, it is not necessary that the auditor should furnish that form to the corporations: *Louisville & J. Ferry Co. v. Commonwealth (Ky.)*, 47 S. W. Rep. 877. In a proceeding under the Kentucky statute providing for the issue of a summons to one who fails to give a proper list of his taxable property, there need not have been a demand by the assessor upon the taxpayer to list his property for taxation: *Louisville & E. Mail Co. v. Barbour*, 88 Ky. 73. For the requirement of the Missouri statute in regard to the assessor's leaving blank statement and written notice, see *State v. Hoyt*, 123 Mo. 348; *State v. Seahorn*, 139 Mo. 582. In that state the right to assess, where

assessors to make the assessment from it.¹ The list when received by the assessor does not constitute an assessment, but only aids in obtaining a true description of taxable property, and is evidence from which an assessment may be made.² Nor is the listing a prerequisite to a valid assessment, it being the assessor's duty, where the owner fails to furnish the list required by law, to assess the property from other sources of information.³ The assessors cannot waive the bringing in of the list.⁴ It has been held that the person from whom a list is required under a penalty cannot excuse himself by showing as to an

the taxpayer is not found at his residence or place of business, attaches upon the assessor's leaving notice at either place, between certain dates, requiring a list of taxables: *State v. Cummings*, 151 Mo. 49. Notice by assessors in Rhode Island requiring owners to bring in exact account of their taxable real estate: *Kettelle v. Warwick & C. Water Co. (R. I.)*, 49 Atl. Rep. 492. In California, under the statute for taxing migratory stock, a statement of intention as to moving such stock must be called for at the time of the assessment, or the owner need not furnish it: *People v. Shipper*, 53 Cal. 675.

¹ A statute providing that "no person shall be liable to taxation on personal property except upon the surplus of ratable personal estate owned by him over and above his indebtedness" does not relieve him from duty to make return, as required by law, "of all his ratable estate;" ratable property meaning all property capable of being appraised, and not simply that which is taxable: *Coventry County v. Assessors*, 16 R. I. 240. As to whether one is required to list for taxation his shares of corporate stock, see *Wiley v. Board of Com'rs*, 111 N. C. 397; *Lee v. Sturges*, 46 Ohio St. 153. As to the sufficiency of an account of ratable estate, see *Clarke v. Tinkham*, 20 R. I. 790. The "true and perfect list" which the Maine statute

requires the taxpayer to bring in need not specify values: *Orland v. Hancock County Com'rs*, 76 Me. 460. The Massachusetts statute is not complied with by the taxpayer's exhibiting to the assessors a plan of his real estate, or referring them to the list of a previous year: *Winnissimet Co. v. Chelsea*, 6 Cush. 477. And see *Otis Co. v. Ware*, 8 Gray 509. A return by a corporation that it has "no ratable personal property," and owns none of the chattels for which the statute specifically makes it taxable, is a sufficient compliance with the Rhode Island act: *Newport Reading Room's Petition*, 21 R. I. 440. Formal statement by a corporation to the assessor under the Minnesota statute held insufficient: *State v. St. Paul Trust Co.*, 76 Minn. 423. The statement required of a railroad company by the Nevada statute "setting forth a list of the property, real and personal," belonging thereto, need not set forth an itemized list of personalty other than rolling-stock: *State v. Central Pac. R. Co.*, 17 Nev. 259.

² *Oregon, etc. Sav. Bank v. Jordan*, 16 Or. 113. The lists returned by individual taxpayers do not constitute the assessment roll; that is the list made by the assessor: *Vicksburg Bank v. Adams*, 74 Miss. 179.

³ *Pentecost v. Stiles*, 5 Okl. 500.

⁴ *Winnissimet Co. v. Chelsea*, 6 Cush. 477.

article he should have listed that another person had listed it.¹ And where one excused himself from making a list, saying it was unnecessary, such excuse was held to be a refusal.² If a railroad company, in furnishing its statement, complies strictly with the statute—which relates to railroad property only,—it cannot be required, so far as affecting its right to a reduction of assessment on railroad property, to furnish a statement of all its property, personal and real, as required by the general revenue law.³

Oath to list. In some states the list is required to be given in under oath; and where this is the law, the taxpayer will take no benefit from the list unless it is sworn to.⁴

Conclusiveness of list. The statute commonly determines what conclusiveness shall be allowed to the list; but in general it may be said not to be conclusive on the assessors,⁵ though, if

¹Olds v. Commonwealth, 3 A. K. Marsh. 465.

²State v. Parker, 33 N. J. L. 192. See State v. Bishop, 34 N. J. L. 45; State v. Parker, 34 N. J. L. 49; State v. McChesney, 34 N. J. L. 63.

³State v. Central Pac. R. Co., 17 Nev. 259.

⁴Lee v. Commonwealth, 6 Dana 311. It has been held in Indiana that the assessor and his deputies have authority to administer all necessary oaths in connection with tax-lists; the power, while not in terms given by the statute, being clearly implied: State v. Reynolds, 108 Ind. 353. As to what is sufficient verification, see Lanesborough v. County Com'rs, 131 Mass. 424; Arnold v. Middleton, 41 Conn. 206. Oath by attorney of corporation: Narragansett Pier Co. v. Assessors, 17 R. I. 452. The statutory penalty in Iowa against a taxpayer who refuses to verify his inventory cannot be enforced unless the assessor gave to him the information and notice required by the statute: Marion County v. Galvin, 73 Iowa 18. Nor is that penalty

incurred by a refusal to subscribe printed affidavits presented by the assessors without an offer to administer the statutory oath: Marion County v. Kruidenier, 72 Iowa 92. Where a taxpayer, instead of attaching to his inventory the oath in the precise form given by statute, added the words "to my best knowledge and belief," it was held that the listers were entitled to double the value of his property as ascertained by themselves, in the manner allowed in case of wilful omission to make and swear to a legal inventory: Newell v. Whittingham, 58 Vt. 341. In Wisconsin the assessor is not bound by an unsworn list, and may arrive at the property by other means. If the taxpayer claims the assessment to be excessive, his remedy is by appeal: Lawrence v. Janesville, 46 Wis. 364. The omission to require an oath to the list is not fatal: Lyman v. Anderson, 9 Neb. 367.

⁵Felsenthal v. Johnson, 104 Ill. 21; Humphreys v. Nelson, 115 Ill. 45; Thompson v. Tinkcom, 15 Minn. 295; State v. Reed, 159 Mo. 77. The as-

in due form, it is taken as *prima facie* correct, and the assessors add to it in making up their assessments only as the statute

sessing officer in determining one's surplus over and above his debts is not bound by the taxpayer's statement as conclusive: *Baldwin v. Shine*, 84 Ky. 502. A corporation's return for assessment is not conclusive upon the taxing officers, unless made so by statute: *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12; *Chicago, etc. R. Co. v. Paddock*, 75 Ill. 616; *St. Louis, etc. R. Co. v. Surrell*, 46 Mich. 193. A state board of equalization, in assessing railroad property for taxation, is not bound by the valuation fixed by the company: *Illinois & St. L. R. Co. v. Stookey*, 122 Ill. 358. Under the South Dakota statute, the board of assessment was not concluded by the value placed by an express company's statement upon the company's property, but could take into consideration its contracts with railroad companies: *State v. State Board*, 3 S. D. 338. Under the New York consolidation act of 1882, the commissioners are not concluded by statements of a corporation as to the amount of personal property assessed, made upon its examination in regard thereto: *People v. Barker*, 144 N. Y. 94. That for several years the state accepts as conclusive the return by a railroad company extending into another state of a certain proportion of its capital stock as taxable within the state, held not to estop it from thereafter insisting on the correct proportion: *Commonwealth v. Fall Brook R. Co.*, 188 Pa. St. 199. In a suit to determine the validity of plaintiff's tax-list as assessed by listers, a verified inventory made by him and delivered to them is not admissible in his favor: *Fulham v. Howe*, 60 Vt. 351. In *Kansas, etc. R. Co. v. Ellis County*, 19 Kan. 584, it appeared that the taxpayer returned a sworn state-

ment of its property as required by law, and that after notice given the county commissioners, upon their personal knowledge and previous returns made by the taxpayer, but without evidence introduced on the hearing, save in corroboration of the correctness of the statement, raised the valuation; and this was held valid, the court saying that the proceeding is only *quasi-judicial*, and that while evidence may be taken it is not indispensable. On the other hand, it has been said that assessors should adopt the lister's valuation in the absence of any evidence of its incorrectness: *People v. Reddy*, 43 Barb. 539; *People v. Albany Assessors*, 40 N. Y. 154; see *People v. Barker*, 76 Hun 454; *People v. Feitner*, 41 App. Div. (N. Y.) 571. Yet the assessors are not liable for any *bona fide* exercise of their power in this regard: *Vose v. Willard*, 47 Barb. 320; *Bell v. Pierce*, 48 Barb. 51; *Stearns v. Miller*, 25 Vt. 20; *Wilson v. Marsh*, 34 Vt. 352. But for a failure to perform ministerial duties to the lister's prejudice the officers may be liable: *Kellogg v. Higgins*, 11 Vt. 240; *Fairbanks v. Kittredge*, 24 Vt. 9. The fact that a taxpayer had made a sworn statement of its property, which had been assessed and the taxes collected, held not to prevent the assessor's making a subsequent supplemental assessment of taxable property not contained in the list: *San Francisco v. La Societe Francaise*, 131 Cal. 612. In Ohio a chose in action omitted from the list may be put in by the auditor: *Cameron v. Cappeller*, 41 Ohio St. 533. That the assessor disregarded a formal statement of the property owner in making the assessment was held immaterial in view of the proceedings of the board of equalization:

allows.¹ In the absence of any evidence of fraud, accident, or mistake, a property owner is bound by a schedule of his taxable personalty given by him to the assessor.² Handing in a list

State v. St. Paul Trust Co., 76 Minn. 423.

¹The list is to be taken as presumptively including all the taxpayer's property, although it does not in terms say so: *Lanesborough v. County Com'rs*, 131 Mass. 124. When a township assessor receives a personalty statement without objecting thereto, and afterwards makes his return to the county clerk, and such statement is filed in his office, the assessor has no authority to change and alter the return so made by adding to the assessed value without notice to the owner: *Gibbons v. Adamson*, 44 Kan. 203. In California it was held that the assessor had no authority to add arbitrarily the value of personalty of which the persons making the statement had stated that they were not the owners, where he did not cite them to appear and answer under oath as to their property: *Weyse v. Crawford*, 85 Cal. 196. Under a Massachusetts statute providing that the taxpayer's return should be taken as true by the assessors, unless the taxpayer refused when required "to answer on oath all necessary inquiries as to the nature and amount of his property," and laying upon any false return a severe penalty, it was held that while the assessors might abate the tax upon an item improperly included in the list (*Charlestown v. County Com'rs*, 109 Mass. 270), they cannot add anything to the list upon any information, however satisfactory, which is not communicated to the taxpayer. He has a right to be heard upon the proposed addition: *Moors v. Boston Street Com'rs*, 134 Mass. 431. Under the South Caro-

lina statute, after a taxpayer's return to the county auditor has been submitted to and considered by the township board of assessors, the auditor has no power to examine witnesses as to the true valuation and change the valuation fixed: *State v. Covington*, 35 S. C. 245.

²In *re Bank of Marion*, 153 Ill. 516. If one voluntarily lists for taxation non-taxable stocks, and they are taxed accordingly, he cannot complain, as it is his own fault: *Republic L. Ins. Co. v. Pollak*, 75 Ill. 292. When the list of a corporation contains erroneous items, the corporation, in a suit in which it relies upon the list, cannot disprove the correctness thereof: *People v. Railroad Co.*, 49 Cal. 414. See *Central Pac. R. Co. v. California*, 162 U. S. 91. A railroad company is bound by a statement in a schedule filed by it that certain land owned by it is not part of its right of way: *Iowa Central R. Co. v. People*, 156 Ill. 373, overruling *Railway Co. v. Goar*, 118 Ill. 134. An erroneous overvaluation by a corporate officer will not entitle the corporation to recover part of the taxes paid: *Cerbat Mining Co. v. State*, 29 Hun 81. A taxpayer taxable on receipts of business gave in his list, but protested that the tax was not lawful. He afterwards contended that as to a part he was not taxable, because it had been paid to others as their share of the business. Held, as to this, that he was estopped by his list: *American Union Exp. Co. v. St. Joseph*, 66 Mo. 675. A corporation cannot call in question the validity of a statement of a proper officer given to the assessor as required by the statute: *State v. Northern Trust Co.*, 73 Minn. 70.

which, by mistake of the owner's rights, is made to embrace property not liable to taxation, will not estop him from claiming an abatement as to such exempt property; there being no reason of justice or public policy why it should.¹ But while this is true, it is also true that a taxpayer cannot complain of any mere irregularity in the action of the assessors, into which they have been led by an error or imperfection in his own list not affecting his substantial rights.² And if, by mistake of law, he makes his return to the wrong town, and so is twice taxed, he is remediless.³

Penalties for not giving. The failure to hand in the list, or the refusal to verify it, or the rendering of a false statement, generally subjects the taxpayer to some specified liability.⁴

¹ *Charlestown v. County Com'rs.* 109 Mass. 270, citing *Dunnell Manuf. Co. v. Pawtucket*, 7 Gray 277, where the point was substantially the same. A receiver of an insolvent corporation is not estopped by its secretary's returns, made immediately prior to the receivership, from questioning a franchise tax thereon: *Kirkpatrick v. State Board*, 57 N. J. L. 53. The owner of land which is wrongfully listed for taxes by another, and purchased at the tax-sale by such person, is in no sense bound by such act, and his title is not affected: *Griffith v. Silver*, 125 N. C. 368.

² As where, his agent being called upon for a list, he furnished it, but omitted one parcel of land, which consequently was taxed as non-resident: *Kinsworthy v. Mitchell*, 21 Ark. 145. To the same effect is *Nelson v. Pierce*, 6 N. H. 194. One is estopped from questioning the sufficiency of a description which he himself has furnished to the assessor: *Central Pac. R. Co. v. California*, 162 U. S. 91; *San Francisco v. Flood*, 63 Cal. 504; *Lake County v. Sulphur Bank*, 68 Cal. 14; *Dear v. Varnum*, 80 Cal. 86; *Jeffries v. Clark*, 23 Kan. 448; *Hubbard v. Winsor*, 15 Mich. 146.

³ *People v. Atkinson*, 103 Ill. 45.

⁴ To constitute a wilful failure to make a report to the auditor the person in default need not have had actual knowledge of the law requiring the report: *Louisville & J. Ferry Co. v. Commonwealth (Ky.)*, 47 S. W. Rep. 877. An administrator who fails to list his decedent's estate for taxation while it remains in his hands may be proceeded against, and an assessment made, even after he has settled and made distribution: *Baldwin v. Shine*, 84 Ky. 502. For the statutory proceedings in Kentucky to compel listing, see *Louisville & N. R. Co. v. Commonwealth*, 85 Ky. 198; *Spalding v. Commonwealth*, 88 Ky. 135; *Whitaker v. Brooks*, 90 Ky. 68; *Commonwealth v. Singer Manuf. Co. (Ky.)*, 21 S. W. Rep. 354. In California failure to file sworn statement of property, or to make claim to assessor or board of supervisors in apt time, precludes one's recovering taxes paid by him on the value of a mortgage on his lands: *Henne v. Los Angeles*, 129 Cal. 297. As to the proceedings in Ohio before a county auditor for the correction of false returns, see *Gager v. Prout*, 48 Ohio St. 89. Remedy in that state for bank cashier's false return to auditor: *Miller v. First Nat. Bank*, 46 Ohio St. 424. Pro-

Sometimes to the doubling for taxation such estimate as the assessor shall make of his property;¹ sometimes to a definite

visions requiring the county auditor, when any person makes a false statement of his personalty subject to taxation, to charge him on the duplicate with the proper amount, apply only to persons required to make returns of their property for taxation, and not where the stock of a shareholder in a bank is returned not by himself but by the cashier: *State v. Akins*, 63 Ohio St. 182. A wilful undervaluation of property is sufficient to constitute a "false return" within the meaning of a statute authorizing the county auditor, in case of such a return by a corporation, to revise it: *Ohio Farmers' Ins. Co. v. Hard*, 59 Ohio St. 248. See, also, as to what constitutes a false return, *Ratterman v. Ingalls*, 48 Ohio St. 468.

¹ *Butler v. Bailey*, 2 Bay 244. A statute providing that if a person wilfully omits to make, swear to, and deliver an inventory, the listers shall double his list, means by "wilfully" no more than intentionally: *Buchanan v. Cook*, 70 Vt. 168. Under such statute an error by the listers in determining the amount due on a note, they acting in good faith and with common care and skill, did not invalidate the list: *Bullock v. Guilford*, 59 Vt. 516. Where one fails to return a satisfactory inventory it is not error to take his real estate at the appraisal of the preceding year, and double it: *Bartlett v. Wilson*, 60 Vt. 644. The assessors cannot, however, make their appraisal and then double it on a mere rumor of what the taxpayer is worth, and then deny him a hearing: *Howes v. Barrett*, 56 Vt. 141. See *Brush v. Baker*, 56 Vt. 143. But it is not necessary that the listers should actually see the property before thus appraising it; they may determine the question of its existence according to the ordinary rules of evidence: *Weatherhead v.*

Guilford, 62 Vt. 327. And where a person refuses to give any information regarding property believed by the listers to belong to him, he cannot afterwards, in an action to recover back the taxes paid on such property, attack the judgment of the listers and the board of civil authority in assessing such property to him: *Ibid.* Under the Vermont statute providing that if the sum obtained by doubling is, in the opinion of the listers, less than the amount of the taxpayer's taxable property, they shall further assess him a sum which will, in their judgment, make up such amount, the action of listers in assessing one whose list they have doubled, when in their opinion the sum so obtained is less than his taxable property, is judicial, and not open to collateral attack: *Fulham v. Howe*, 60 Vt. 351. If a taxpayer's list is made up by the listers because of his failure to return an inventory, the statutory provisions requiring notice to the taxpayers apply whether they make up his list by doubling or not: *Thomas v. Leland*, 70 Vt. 223. A notice to one who had failed to return an inventory, that the listers "have assessed" him in a stated amount for moneys and credits, and, agreeably to the statute, have doubled the same, is not misleading, though technically the listers could not "assess" and then double the "assessment:" *Meserve v. Folsom*, 62 Vt. 504. Further as to the Vermont statute, see *Rowell v. Horton*, 58 Vt. 1. A petition, in an action for the collection of taxes from one who has refused to give a list of his property, need not set out the district assessor's valuation for each year, and the doubling thereof by the president and board of assessors: *State v. Cummings*, 151 Mo. 49.

penalty¹ or forfeiture;² sometimes to deprivation of any right to object to or to appeal from what the taxpayer may regard as an unjust assessment;³ and sometimes to criminal indict-

¹See *State v. Leavell*, 3 Blackf. 117; *State v. Hamilton*, 5 Ind. 310; *Boyer v. Jones*, 14 Ind. 354; *Louisville, etc. R. Co. v. State*, 25 Ind. 177; *State v. Lauer*, 116 Ind. 162; *Durham v. State*, 116 Ind. 514; *Davis v. State*, 119 Ind. 555; *State v. Halter*, 149 Ind. 292; *La Plante v. State*, 152 Ind. 80; *Ex parte Lynch*, 16 S. C. 32; *Genin v. Auditor*, 18 Ohio St. 534; *Wright v. Adler*, 44 Ohio St. 539; *Miller v. First Nat. Bank*, 46 Ohio St. 424; *Williamson's Estate*, 153 Pa. St. 508. To make a return of property for taxation false within the meaning of the Ohio statute providing that if any person shall make a false return or statement of his property in listing it for taxation, or shall evade making a return or statement, the auditor shall ascertain the true amount of his taxable property, and add fifty per cent., the return must be made false intentionally, or through culpable negligence; but though a person is not liable to the penalty if he makes an untrue return through mistake, he becomes liable if, upon learning of the mistake, he fails to correct it: *Ratterman v. Ingalls*, 48 Ohio St. 468. A wilful undervaluation constitutes a false return: *Ohio Farmers' Ins. Co. v. Hard*, 59 Ohio St. 248. In an action to recover the penalty provided by the Wisconsin statute in case a property owner shall "intentionally make a false statement" of his holdings to avoid the payment of the tax levied, a verdict that the defendant "is guilty, not criminally, but negligently," is one for the defendant: *State v. Wolfrum*, 88 Wis. 481. The penalty which the Connecticut statute imposes upon a "resident of a town" liable to give in a list, and pay taxes therein, for neglect or refusal to give in his list, cannot be

imposed upon a non-resident: *Shaw v. Hartford*, 56 Conn. 351. Where a railroad fails to list its property for county taxation, and the sheriff reports it to the county court as delinquent, that court has power to direct its clerk to assess the road; but a fine and triple tax, being a penalty, cannot be imposed if more than five years have elapsed since the year for which the tax is claimed: *Louisville & N. C. R. Co. v. Commonwealth*, 85 Ky. 198. Where the penalty for failure to render a true list of property is not added by the assessor or collector to the assessment as made, it cannot be recovered in a suit for delinquent taxes: *United States Trust Co. v. Territory (N. M.)*, 62 Pac. Rep. 987. Some statutes, however, make provision for enforcing by suit the penalties for neglect to hand in lists: see *Drexel v. Commonwealth*, 46 Pa. St. 31. As to state's action to recover penalty for false return, see *State v. Halter*, 149 Ind. 292.

²Under a statute providing that any grantee, his heirs or assigns, from the state of any swamp land, who has not listed it for taxation, shall forfeit all right, title, and interest in said swamp land, and the same shall *ipso facto* revert to the state, the title of a person in default is not divested without a proceeding by the state or its assignee: *Eastern Carolina Land, etc. Co. v. State Board*, 101 N. C. 35.

³Under the amended statute of Montana the assessor has the right to assess the property of taxpayers who fail to file lists of their property: *Board of Com'rs v. Anderson*, 68 Fed. Rep. 341. In Kentucky, though the valuation of the property may be fixed by the assessor, he has no authority to list it of his own accord on the taxpayer's refusal to do so,

ment.¹ The right to discriminate in some manner against those who fail to hand in lists has often been judicially recognized.²

but must report the fact to the supervisors as required by the statute: *Clark v. Belknap* (Ky.), 13 S. W. Rep. 212. Under the California code a land-owner's refusal or neglect to return a mortgage on his land does not authorize the assessor arbitrarily to assess it to him: *Henne v. Los Angeles*, 129 Cal. 297. Assessors in New Jersey have no power, on the making of an incomplete statement by a gas company, to ascertain and fix the amount of dividend, on which to base their calculations: *State v. Comptroller*, 54 N. J. L. 135. A statute providing that a person neglecting to furnish an account of taxable property shall have no remedy if over-taxed, and requiring assessors to make lists of taxable property, distinguishing those who have presented their account from those who have not, does not fail of due process of law: *McTwiggan v. Hunter*, 18 R. I. 776. Where assessors, under the Connecticut statute, fill out a tax-list because the taxpayer fails to furnish one, they need not get knowledge of specific property kept back; if they exercise their best judgment and believe it is sufficient: *Hartford v. Champion*, 54 Conn. 436. A taxpayer having failed to return a list of his property, one made by the assessor is valid though it includes "insurance stocks" without designating the companies in which the stocks were held: *Hartford v. Champion*, 58 Conn. 268. Where a corporation does not submit a list of property to the assessors, it cannot object that the valua-

tion list contains only the general description "personal estate:" *Lamson Consol. Store-Service Co. v. Boston*, 170 Mass. 354. The Illinois statute does not make it the duty of the assessor to examine a property owner except when a schedule duly verified has been presented to him by the person listing the property: *New York & C. G. & S. Exchange v. Gleason*, 121 Ill. 502. One who has handed in no list and is over-taxed cannot pay his tax, and recover back on showing a mistake in the assessment; a mistake not rendering the tax illegal: *Lott v. Hubbard*, 44 Ala. 593. Where a taxpayer fails to furnish the assessor, on demand, the sworn statement of his property required by statute, the assessor's duty is to assess such taxpayer's property within his jurisdiction, and in that case the taxpayer cannot recover taxes paid under protest on property so assessed, though they have been assessed in another county the same year: *Erwin v. Hubbard* (Idaho), 37 Pac. Rep. 274. Under a statute providing that a person who neglects or refuses to bring in an account of his ratable estate, if over-taxed, shall have no remedy therefor, a person cannot claim that he was over-taxed, or not subject to taxation, when he had a watch, and neglected to bring in an account, though the assessment with which he was assessed is \$5,000: *Tripp v. Torrey*, 17 R. I. 359. Where one fails to return under oath to the assessor a statutory statement of his property, and the assessor makes a valua-

¹ See *Durham v. State*, 116 Ind. 514; *Commonwealth v. Toncray* (Ky.), 52 S. W. Rep. 797; *Mock v. State*, 11 Tex. App. 56; *Caldwell v. State*, 14 Tex. App. 71; *Galbraith v. State*, 33 Tex. Crim. App. 331.

² See *Donovan v. Insurance Co.*, 30 Md. 155; *Winnissimet Co. v. Chelsea*, 6 Cush. 477; *State v. Welch*, 28 Mo. 600; *State v. Bell*, 1 Phil. (N. C.) 76. See, also, the cases cited in the notes preceding.

When the discrimination consists merely in submitting the party to the "doom" of the assessor, and depriving him of any appeal, it would seem that there could be no valid objection to it.¹ The assessor will be likely, under such circumstances, to make liberal estimates of property, so that the state, it may be presumed, will not be the loser, and the taxpayer, if he is over-assessed, suffers a misfortune for which no one, unless it be

tion, the taxpayer cannot impeach the assessment and levy on the ground that the county board did not meet on the proper day to equalize the assessment, as in any event he could not have had a reduction from the board: *Modoc County v. Churchill*, 75 Cal. 172. In Nevada a taxpayer who fails to hand in his list is allowed no standing before the board of equalization: *State v. State Board of Equal.*, 7 Nev. 83. And, therefore, in an action to recover taxes assessed against one who has neglected to return a statement of his property, and refused to sign the one prepared by the assessor, evidence that an excessive valuation was placed on the property is not admissible: *State v. Diamond Valley, etc. Co.*, 21 Nev. 86. In New Jersey one loses his right to appeal if he fails to state to the assessor, if required, the particulars of his property under oath: *State v. Appgar*, 31 N. J. L. 358. And in that state the assessor's right to estimate the value of property does not permit an assessment to be made against an absentee who has in his charge property belonging to others, even where the taxpayer was intentionally absent for the purpose of evading the assessor: *State v. Sherrer*, 49 N. J. L. 610. Under the Massachusetts statute no abatement will be made before a list is brought in, though a sufficient excuse is shown for not bringing it in at the proper time: *Charlestown v. County Com'rs*, 101 Mass. 87. But where a list was not

brought in until after the time for it had expired, the delay, however, being chargeable to the assessors themselves, who expressly told the party's agent nothing should be lost by the delay, it was held that the right to apply for an abatement was not lost: *Lowell v. County Com'rs*, 3 Allen 546. A tenant in common of the fee, occupying the land under an agreement with her co-tenant by which she is to pay the taxes, is not a "tenant" paying rent so as to prevent her neglect to bring in a list of the real estate from disabling her to sue for an abatement of the tax: *Ashley v. County Com'rs*, 166 Mass. 216. The Louisiana statute providing for the filling out by each taxpayer of a list of his property, to be delivered to the assessor, is not mandatory, there being no penalty for non-compliance, and the taxpayer is not shut out from all relief owing to his omission: *Merchants' Mut. Ins. Co. v. Board of Assessors*, 40 La. An. 371. It has been held in New York that where a corporation fails for ten years to comply with the statute requiring annual reports to be made to the comptroller, the assessment made by the latter in the absence of such report should not be disturbed unless it clearly appears unjust, or based on an erroneous principle: *People v. Wemple*, 138 N. Y. 582.

¹ See *Porter v. County Com'rs*, 5 Gray 365; *Otis Co. v. Ware*, 8 Gray 509; *Lincoln v. Worcester*, 8 Cush. 55; *State v. Appgar*, 31 N. J. L. 358; *State v. Board of Equal.*, 7 Nev. 33.

himself, is blamable. But when a statute goes further, and subjects the person to penalties of any kind, to be inflicted by a ministerial officer without a hearing, for a neglect that may have been unintentional and perhaps entirely excusable, it is not clear that it is consistent with the genius of the common law, or with general principles of American jurisprudence. But the authorities sustain such statutes, as is said in one case, "on the ground of state necessity and immemorial usage."¹ It has been decided in Kentucky that penal provisions of this character must be construed strictly;² a decision quite in harmony with the general rules of construction. But when the construction is clear, they are generally enforced.

Examination of books and papers. It has been decided that the constitutional provision against unreasonable searches and seizures is not violated by a statute giving tax officials the right to examine books and papers of taxpayers for the purpose of listing and assessing property for taxation.³

Right to a hearing. The summary nature of tax proceedings has been remarked upon already. They are made summary

¹ *Ex parte Lynch*, 16 S. C. 32. In this case the statute required an addition to the assessment of fifty per cent. as a penalty for default in making return of property for taxation. A similar statute has been sustained in Indiana: *Boyer v. Jones*, 14 Ind. 364; and in Pennsylvania: *Fox's Appeal*, 112 Pa. St. 337. It has been decided in Minnesota that where the constitution requires all taxation to be by value, it is incompetent to provide by law for increasing the assessed valuation by a sum to be added as a penalty for not handing in a list: *McCormick v. Fitch*, 14 Minn. 252. And see *State v. Allen*, 2 McCord 55.

² *Alexander v. Commonwealth*, 1 Bibb 515; *McCall v. Justices*, 1 Bibb 516; *Olds v. Commonwealth*, 3 A. K. Marsh. 465; *Childs v. Commonwealth*, 4 J. J. Marsh. 577. In *Drexel v. Commonwealth*, 46 Pa. St. 31, the point was raised but not decided.

³ *Co-operative B. & L. Assoc. v. State*

(Ind.), 60 N. E. Rep. 146. This case holds that such an examination may properly extend back to the time when the statute was enacted, and that *mandamus* lies to compel a building association to permit the county assessor to examine its books for the purpose of determining whether any of its stock has been exempted from taxation. A bill lies against an insurance company and its officers to compel the discovery of a list of its stockholders, that the assessor may know in whose names to assess the shares of stock: *Memphis v. Home Ins. Co.*, 91 Tenn. 558. State board of equalization held to have jurisdiction to require a banker to submit bank's books to examination by board, and to testify whether certain depositors have, within his knowledge, changed their deposits into "greenbacks" to escape taxation: *Satterwhite v. State*, 142 Ind. 1.

of necessity. The assessment, if made in compliance with the law, will establish conclusively the basis of periodical taxation. Every inhabitant of the state is liable, by means thereof, to have a demand established against him on the judgment of others regarding the sum which he should justly and equitably contribute to the public revenues. Every owner of property in the state, whether he be an inhabitant or not, is liable to have a lien in like manner established against his property. Moreover, the persons who make the assessment lighten the burden upon themselves in proportion as they increase it upon others. They must act to a large extent upon imperfect and unsatisfactory information, and the danger that when most honest and fair minded they will misjudge and thus do injustice is always imminent. It is therefore a matter of the utmost importance to the person assessed that he should have some opportunity to be heard and to present his version of the facts before any demand is conclusively established against him; and it is only common justice that the law should make reasonable provision to secure him as far as may be practicable against the oppression of unequal taxation, by making the privilege of being heard a legal right.

The obligation to secure such a right is recognized by the statutes of the several states, whose provisions, however, are greatly lacking in uniformity. We have just seen that in some states the taxpayers are either required or allowed to bring in lists of their taxable property; and, when these lists are in due form and properly verified, a certain degree of conclusiveness is given to them. Where such lists are not required, it is provided in some states that when the valuation of personal estate is made by the assessor, the person assessed may reduce the assessment by his own oath, which, for this purpose, is made conclusive.¹ In other states an appeal is allowed to some board of review; and perhaps there is no state which does not provide some method whereby it is intended that the party assessed shall have a hearing before the assessment becomes fixed and final. If the statutory directions are observed, they perhaps make all the provision that is necessary for the purposes of justice.

It is unfortunately often the case, however, that statutory

¹ See *People v. Davenport*, 91 N. Y. 574.

provisions are not strictly observed, and that either the public or individuals will suffer in consequence. The question presented may then be, whether the provisions which have been disregarded are mandatory to the officers, or it may arise on the terms of some curative statute which undertakes to heal the defects. In substance the question will be whether the right to be heard in tax cases is a constitutional right and indefeasible.

Upon this subject there is a general concurrence of authorities in the affirmative. It is a fundamental rule that in judicial or *quasi*-judicial proceedings affecting the rights of the citizen he shall have notice and be given an opportunity to be heard before any judgment, decree, order, or demand shall be given and established against him.¹ Tax proceedings are not in the strict sense judicial, but they are *quasi*-judicial, and as they have the effect of a judgment, the reasons which require notice of judicial proceedings are always present when the conclusive steps are to be taken.² Provision for notice is therefore part

¹Queen v. Dyott, L. R. 9 Q. B. 47; Lehman v. Robinson, 59 Ala. 219; Brown v. Denver, 7 Colo. 305; Savannah F. & W. R. Co. v. Savannah, 96 Ga. 680; Darling v. Gunn, 50 Ill. 424; Commissioners v. Lang, 8 Kan. 284; Lowell v. Wentworth, 6 Cush. 221; Butler v. Supervisors, 26 Mich. 22; Thomas v. Gain, 35 Mich. 155; Dool v. Cassopolis, 42 Mich. 547; Woodman v. Auditor-General, 52 Mich. 28; Pacific R. Co. v. Cass County, 53 Mo. 17; South Platte Land Co. v. Buffalo County, 7 Neb. 253; Melvin v. Weare, 56 N. H. 436; Cahoon v. Coe, 57 N. H. 556, 570; Barker v. Omaha, 16 Neb. 269; State v. Drake, 33 N. J. L. 194; State v. Anderson, 38 N. J. L. 82; State v. Commissioners, 41 N. J. L. 83; Stuart v. Palmer, 74 N. Y. 183; Philadelphia v. Miller, 49 Pa. St. 440, 448; Clement v. Hale, 47 Vt. 680; Brush v. Baker, 56 Vt. 143.

²On the general subject of the right to a hearing in some stage of the proceedings, see *McMillen v. Anderson*, 95 U. S. 37; *Davidson v. New Orleans*, 96 U. S. 97; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Spencer v. Merchant*, 125 U. S. 345; *Walston v. Nevin*, 128 U. S. 578; *Palmer v. McMahon*, 133 U. S. 660; *Paulsen v. Portland*, 149 U. S. 30; *Winona & St. P. L. Co. v. Minnesota*, 159 U. S. 526; *Bauman v. Ross*, 167 U. S. 548; *Bank v. Maher*, 8 Fed. Rep. 884; *San Mateo County v. Southern Pac. R. Co.*, 13 Fed. Rep. 722, 8 Sawy. 238; *Santa Clara County v. Southern Pac. R. Co.*, 18 Fed. Rep. 385; *Albany City Bank v. Maher*, 20 Blatch. 341; *Dundee Mortg. etc. Co. v. Parrish*, 24 Fed. Rep. 197; *Scott v. Toledo*, 36 Fed. Rep. 385; *Murdock v. Cincinnati*, 39 Fed. Rep. 891; *Lewis v. Withers*, 44 Fed. Rep. 165; *Murdock v. Cincinnati*, 44 Fed. Rep. 726; *Meyers v. Shields*, 61 Fed. Rep. 713; *Western Ranches v. Custer County*, 89 Fed. Rep. 577; *Charles v. Marion*, 100 Fed. Rep. 538; *Ford v. State*, 51 Ark. 103; *Carson v. Board of Directors*, 59 Ark. 513; *Hutson v. Woodbridge Protection Dist.*, 79 Cal. 90; *McDonald v.*

of the "due process of law" which it has been customary to provide for these summary proceedings;¹ and it is not to be

Littlefield, 5 Mackey 574; Bensinger v. District of Columbia, 6 Mackey 285; Allman v. District of Columbia, 3 App. D. C. 8; Speer v. Athens, 85 Ga. 49; Garvin v. Daussman, 114 Ind. 429; Wells County v. Gruner, 115 Ind. 224; Johnson v. Lewis, 115 Ind. 490; Kuntz v. Sumption, 117 Ind. 1; McEweney v. Sullivan, 125 Ind. 407; Eschenburg v. County Com'rs, 129 Ind. 398; Ferry v. Campbell, 110 Iowa 290; Dykes v. Lockwood Mortg. Co., 57 Kan. 416; Owensboro & N. R. Co. v. Daviess County (Ky.), 3 S. W. Rep. 164; Bruce v. Vanceburg, etc. T. R. Co. (Ky.), 35 S. W. Rep. 112; Baltimore v. Scharf, 54 Md. 499; County Com'rs v. Union Mining Co., 61 Md. 545; Ulman v. Baltimore, 72 Md. 587; County Com'rs v. New York Mining Co., 76 Md. 549; Monticello Distilling Co. v. Mayor, etc., 90 Md. 416; Williams v. Darby (Md.), 29 Atl. Rep. 605; Fowble v. Kemp, 92 Md. 630; Whiteford v. Probate Judge, 53 Mich. 130; Sleigh v. Grand Rapids, 84 Mich. 497; Lansing v. State Auditors, 111 Mich. 327; State v. Northern Pac. R. Co., 40 Minn. 512; Brown v. Markham, 60 Minn. 233; McGuire v. Investment Co., 76 Miss. 868; Farnsworth Lumber Co. v. Fairley (Miss.), 28 South. Rep. 569; Clarksdale v. Yazoo & M. V. R. Co. (Miss.), 29 South. Rep. 93; Northern Pac. R. Co. v. Carland, 5 Mont. 146; Boody v. Watson, 64 N. H. 162; Overing v. Foote, 65 N. Y. 623; In re McPherson, 104 N. Y. 306; Remsen v. Wheeler, 105 N. Y. 573; In re Union Coll., 129 N. Y. 308; Dasey v. Skinner, 57 Hun 593; People v. Henion, 64 Hun 471; People v. New Rochelle, 83 Hun 185; People v. Dickinson, 1 App. Div. (N. Y.) 19; Power v. Larabee, 2 N. D. 141; Pickton v. Fargo (N. D.), 88 N. W. Rep. 90; Adler v. Whitbeck, 44 Ohio St. 359; Caldwell v. Carthage, 49 Ohio St. 334; Larimer v. McCall, 4 W. & S. 133; Stewart v. Trevor, 56 Pa. St. 374; Hershberger v. Pittsburgh, 115 Pa. St. 78; Evans v. Fall River County, 9 S. D. 130; Kerr v. Woolley, 3 Utah 456; Violett v. Alexandria, 92 Va. 561; Heth v. Radford, 96 Va. 272; Norfolk v. Young, 97 Va. 728; Dietz v. Nee-nah, 91 Wis. 422. It is not necessary that the taxpayer have notice of every step in the tax proceedings; it is sufficient if he has an opportunity

¹ See *ante*, pp. 59-64. The principle of notice and due process of law does not apply to taxation which is uniformly assessed against all property in the same municipality or political subdivision or corporation. No notice is required of the levying of a tax authorized or directed by law: Lake Shore & M. S. R. Co. v. Smith, 131 Ind. 512. An assessment for back taxes without notice to the taxpayer, constituting a lien upon his property and a cloud upon his title, is a deprivation of property without due process of law: Meyers v. Shields, 61 Fed. Rep. 713. In adding omitted property to the dupli-

cate, notice and hearing must be given the owner: Co-operative B. & L. Assoc. v. State (Ind.), 60 N. E. Rep. 146. It was held in Wabash R. Co. v. Johnson, 108 Ill. 11, that where assessors discover that property has been omitted from the roll, they may put it on without giving notice. See Oregon v. W. M. Sav. Bank, 16 Or. 113; Billingshurst v. Spink County, 5 S. D. 205. A statute providing that the cost of street improvements shall be assessed against abutting property, and providing for no notice, was held unconstitutional as not due process of law: Charles v. Marion, 100 Fed. Rep. 538.

lightly assumed that constitutional provisions, carefully framed for the protection of property rights, were intended or could be construed to sanction legislation under which officers might secretly assess the citizen for any amount in their discretion, without giving him an opportunity to contest the justice of the assessment.¹ It has often been very pointedly and emphatically declared that it is contrary to the first principles of justice that one should be condemned unheard;² and it has also been justly observed of taxing officers, that "it would be a dangerous precedent to hold that any absolute power resides in them to tax as they may choose without giving any notice to the owner. It is a power liable to great abuse;" and it might safely have been added, it is a power that under such circumstances would be certain to be abused. "The general principles of law applicable to such tribunals oppose the exercise of any such power."³ This being the case, it is not to be

to question the validity or the amount of the tax or assessment before that amount is finally determined, or in subsequent proceedings for the collection of it, or in some suit where the questions involved may be submitted to a court of justice: *Ante*, pp. 59-62; *Keel v. Board of Directors*, 59 Ark. 513; *In re Madeira Irrig. Dist.*, 92 Cal. 296; *Johnson v. Lewis*, 115 Ind. 490; *Chicago & E. R. Co. v. John*, 150 Ind. 130; *Nevin v. Roach*, 86 Ky. 492; *People v. Turner*, 117 N. Y. 227; *Lamb v. Connolly*, 122 N. Y. 531; *Terrel v. Wheeler*, 123 N. Y. 76; *Fithian v. Wheeler*, 125 N. Y. 696; *Martin v. Stoddard*, 127 N. Y. 61. The determination of the tax to be paid by a corporation is not void because of being made without notice, where the statute provides for a subsequent notice—which was duly given—and an appeal: *Commonwealth v. Runk*, 26 Pa. St. 235. Where property of a college is subject to taxation, notice that it is to be assessed need not be given the college, though in previous years it has not been assessed: *Foy v. Coe Coll.*, 95 Iowa 689. Rents charged by

a public corporation for water actually used by private consumers are not in any just sense taxes so that persons against whom they are charged are entitled to notice and an opportunity to be heard before they are established: *Silkman v. Water Com'rs*, 152 N. Y. 327.

¹ *Ferry v. Campbell*, 110 Iowa 290.

² *Cahoon v. Coe*, 57 N. H. 556, and cases cited; *Stuart v. Palmer*, 74 N. Y. 183; *San Mateo County v. Southern Pac. R. Co.*, 13 Fed. Rep. 722, 8 Sawy. 238.

³ *Patten v. Green*, 13 Cal. 325, 329; *Cleghorn v. Postlewaite*, 43 Ill. 428. If possible, statutes will be so construed as to require notice: *Kansas Pac. R. Co. v. Russell*, 8 Kan. 558; *Baltimore v. Grand Lodge*, 60 Md. 280; *Gilson v. Munson*, 114 Mich. 671; *Sioux City, etc. R. Co. v. Washington County*, 3 Neb. 30. Notice of appraisement for collateral inheritance tax should be given legatees, though the statute makes no express provision therefor, but merely gives them the right of appeal: *In re Handley's Estate*, 181 Pa. St. 339. Where a taxpayer has made due re-

supposed that the legislature by any ambiguous or doubtful language has undertaken to confer it. All reasonable presumptions in construction should favor justice and right.¹

It is not customary to provide that the taxpayer shall be heard before the assessment is made, except where a list is called for from him; but a hearing is given afterwards, either before the assessors themselves, or before some court or board of review.² And of the meeting of that court or board the taxpayer must in some manner be informed: either by personal notice,³ or by some general notice which is reasonably certain

turn of his personal property without any objection being made to the valuation, the assessor cannot raise it without notice to the taxpayer, even though the statutes contain no provisions expressly requiring such notice: *State v. Spencer*, 114 Mo. 574. See, for the same principle, *Lewis v. Withers*, 44 Fed. Rep. 165. A taxpayer who has voluntarily invoked the benefit of a statutory provision for the selection of persons to do justice touching the assessment of property, by selecting one of such persons, cannot complain that the mode of assessment to which he has thus resorted is unconstitutional because the statute fails to make any provision for notice or hearing, or for any other reason: *Collier v. Morrow*, 90 Ga. 148.

¹ See *Gilson v. Munson*, 114 Mich. 671.

² *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 625; *Chicago & E. R. Co. v. John*, 150 Ind. 130; *Kelley v. Rhoads*, 7 Wyo. 237. Where a city charter provides that after an assessment roll is completed the board of assessors shall give notice thereof, and that the roll will remain in their office for twelve days for inspection of all interested therein, and that at the expiration of such time the board shall, after needful correction, sign and return

the roll to the council, this gives those taxed an opportunity to be heard before the board of assessors: *Beecher v. Detroit*, 92 Mich. 628. Where one has the right to appear "and be heard" before the common council, it is not competent for the council to limit the objections to such as may be made in writing: *State v. Jersey City*, 25 N. J. L. 309. But neither one who has made written objection to the assessment, nor those who do not appear at all, can object: *State v. Jersey City*, 28 N. J. L. 500. That there must be opportunity afforded for a hearing at the time and place fixed by law, see *Sioux City, etc. R. Co. v. Washington County*, 3 Neb. 30. The right to a hearing by the village assessor sitting as a board of review as provided by the village charter is one of which the taxpayer cannot lawfully be deprived: *Three Rivers Common Council v. Smith*, 99 Mich. 507. The fact that the person assessed was abroad when the assessment roll was opened for correction, and therefore made no objection, is no defense to the payment of the tax: *Terrill v. New Orleans*, 27 La. An. 520.

³ Where personal service is required, proof of giving it is a jurisdictional fact: *Scott v. Brackett*, 89 Ind. 413. A notice does not hold good from year to year; it must be given annually: *Dean v. Aiken*, 48

to reach him,¹ or — which is equivalent — by some general law which fixes the time and place of meeting, and of which he must take notice. The last is a common method of bringing

Vt. 541. It must be definite — a notice “to the heirs of A.,” held defective: *New Orleans v. Heirs of St. Romes*, 28 La. An. 17. Compare *New Orleans v. Stewart’s Estate*, 28 La. An. 180. A notice of the day and place of the meeting of the listers to hear grievances is sufficient though it does not give the hour; the statute merely requiring it to state “on what day and place they will meet,” and there being no evidence of injury to the taxpayer through the omission: *Smith v. Hard*, 61 Vt. 469. A statute requiring assessors, “before assessing any tax,” to give notice of the time and place of their meeting, which notice shall require all persons and corporations liable to taxation to present accounts of their estates and the value thereof,” at such time as they may prescribe, provides for a notice of but one meeting, for the purpose both of presenting accounts and of making assessments: *McTwiggan v. Hunter*, 18 R. L. 776. Under a statute requiring notice to work the road to be given three days before the time appointed, notice on Saturday to work on the following Tuesday, Wednesday, and Thursday, is bad as to Tuesday, but good as to the other days: *Moore v. State*, 52 Ark. 265. That a conversation regarding the question whether defendant was subject to road duty, had between him and the road overseer, may constitute notice, it must appear to have occurred more than three days before the time fixed for the work: *Lowery v. State*, 52 Ark. 270. Under a statute providing for adding omitted property to the tax duplicate, notice to an executor qualified by the county court is notice to a resident of the county, though the ex-

ecutor be actually a resident of another state: *Gallup v. Schmidt*, 154 Ind. 196. Where the statute prescribes no mode of notifying non-residents of the state of assessments to be made, no notice can be deemed required: *State v. Love*, 47 N. J. L. 436, 49 N. J. L. 235. There being no jurisdiction to assess a personal tax against a non-resident, he is not chargeable with constructive notice of the action of assessors, and is under no obligation to appear before them. As to tangible property which he might have in the state, it would, however, be otherwise: *St. Paul v. Merritt*, 7 Minn. 198. The notice required by statute to be given to each person residing in the district against whom a property road tax is assessed, of the time and place where he may appear and pay his road tax in labor, need not be served upon a railroad company where it has no representative residing in the district, and no depot or station building therein: *Chicago & N. W. R. Co. v. People*, 183 Ill. 196.

¹ The legislature may prescribe the kind of notice, and the time when it shall be given, as well as the tribunal before which the hearing may be had: *Kizer v. Winchester*, 141 Ind. 694. Whether the notice is by publication or by personal service, it will sustain jurisdiction provided there is back of it some law providing for notice; but only the law can prescribe the form of notice, and the law must provide for it: *Kuntz v. Sump-tion*, 117 Ind. 1. Notice by publication, when authorized by law, is sufficient: *State R. Tax Cases*, 92 U. S. 575; *Davidson v. New Orleans*, 96 U. S. 97; *Hagar v. Reclamation Dist.*, 111 U. S. 701; *Kentucky R. Tax Cases*,

the assessment to the notice of the taxpayer, and it is perhaps the best of all, because it comes to be generally understood, and is remembered.¹

Whatever statutory provisions are made for notice and hearing must be regarded, under the rules of construction already given, as mandatory. A compliance with them in all essential

115 U. S. 321; *Lent v. Tillson*, 140 U. S. 316; *Paulsen v. Portland*, 149 U. S. 30; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112; *Del Castillo v. McConnico*, 168 U. S. 674; *Wright v. Davidson*, 181 U. S. 371; *Davies v. Los Angeles*, 86 Cal. 37; *Kuntz v. Sumption*, 117 Ind. 1; *Wiley's Petition*, 89 Mich. 58; *Cole v. Shelp*, 98 Mich. 58; *Muirhead v. Sands*, 111 Mich. 487; *Ball v. Ridge Copper Co.*, 118 Mich. 7; *State v. Weyerhauser*, 68 Minn. 353, 72 Minn. 519; *State v. Pillsbury*, 82 Minn. 359; *Kansas City v. Ward*, 134 Mo. 172; *In re De Peyster*, 80 N. Y. 565; *Philadelphia v. Jenkins*, 162 Pa. St. 461. And such notice suffices even though the proceeding is for taxes omitted in previous years: *Winona & St. P. L. Co. v. Minnesota*, 159 U. S. 526.

¹ *Carroll v. Alsop* (Tenn.), 64 Pac. Rep. 193. That in general the taxpayer must take notice of the general law fixing the time and place of hearing, see *State Railroad Tax Cases*, 92 U. S. 601; *Kentucky R. Tax Cases*, 115 U. S. 321; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Merchants' Bank v. Pennsylvania*, 167 U. S. 461; *Pulaski Equal. Board Cases*, 49 Ark. 518; *St. Louis, I. M. & S. R. Co. v. Worthen*, 52 Ark. 529; *Lent v. Tilson*, 72 Cal. 404; *Cleveland, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 625; *Methodist Pr. Church v. Baltimore*, 6 Gill 391; *O'Neal v. Bridge Co.*, 18 Md. 1, 26; *Monticello Distilling Co. v. Mayor, etc.*, 90 Md. 416; *State v. Runyon*, 41 N. J. L. 98,

103; *Streight v. Durham* (Okl.), 61 Pac. Rep. 1096; *New York, L. E. & W. R. Co. v. Pennsylvania*, 129 Pa. St. 463; *Billinghurst v. Spink County*, 5 S. D. 205; *State v. Armstrong*, 19 Utah 117. A statute taxing bonds and other securities issued by corporations on their nominal instead of their actual value, and requiring the treasurer of the corporation to deduct the tax from the interest payable to their bondholders, cannot be held invalid as making no provision for notice; the law itself gives notice of the tax and of the mode of its collection: *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232. A statute requiring every mining corporation to make out a sworn statement of its property, to be laid before the county board of equalization, which "shall value and assess the capital stock in the manner provided for by law," is sufficient notice to such a corporation that the board will act on its statement, and no other notice of that fact need be given: *Hyland v. Brazil Block Coal Co.*, 128 Ind. 335. Where a statute fixes the time when a bank shall make its report to the auditor-general of the value of its shares, and directs him to hear the stockholders, it satisfies the requirements of notice both as to time and place at which the assessment is to be made, the rule being that official proceedings are always, in the absence of express provision to the contrary, to be had at the office of the officer charged with the duties: *Merchants', etc. Nat. Bank v. Pennsylvania*, 167 U. S. 461.

particulars should therefore be held a condition precedent to any further proceedings.¹ It is not enough to sustain a tax under such circumstances that the officers have acted with just intent, or even that the assessment is relatively fair; the conclusive answer to any suggestion of the kind is that the party has been denied his lawful right to meet such a claim at the proper time.² When, therefore, either directly by the statute, or by some officer or board under its authority, a certain time is fixed for the meeting of a board of review, and the board fails to meet; or a certain time for the return and filing of the assessment for inspection before the meeting of the board, and it is not filed, whereby opportunity for inspection is lost,—the tax proceedings must be regarded as having failed to become

¹French v. Edwards, 13 Wall. 506, 511; Lyon v. Alley, 130 U. S. 177; Albany City Bank v. Maher, 19 Blatch. 175; Walker v. Chapman, 22 Ala. 116; Thomas Manuf. Co. v. Lathrop, 7 Conn. 550, 555; Marsh v. Chestnut, 14 Ill. 223; Cleghorn v. Postlewaite, 43 Ill. 428; Nashville v. Weiser, 54 Ill. 245; Mix v. People, 72 Ill. 241; National Bank v. Cook, 77 Ill. 622; McChesney v. People, 145 Ill. 614, 148 Ill. 221; Chicago & N. W. R. Co. v. People, 171 Ill. 525, 183 Ill. 196; Payson v. People, 175 Ill. 267; Kansas Pac. R. Co. v. Russell, 8 Kan. 558; Negley v. Henderson Bridge Co. (Ky.), 54 S. W. Rep. 171; Lowell v. Wentworth, 6 Cush. 221; Clarksdale v. Yazoo & M. V. R. Co. (Miss.), 29 South. Rep. 93; Girardeau v. Buehrmann, 148 Mo. 198; Ives v. Irey, 50 Neb. 136; State v. Love, 47 N. J. L. 436; Insurance Co. v. Yard, 17 Pa. St. 331, 338; Hershberger v. Pittsburgh, 115 Pa. St. 78; Handley's Estate, 181 Pa. St. 339; McTwiggan v. Hunter, 18 R. I. 776; Thomas v. Leland, 70 Vt. 223. In the Connecticut case cited, the assessment was held void because an abstract thereof which the law required should be filed by the 1st of December was actually not filed until the 20th, although this was ten days before the meeting of

the board of review. A similar error would not now be fatal in Illinois under the statute: see Buck v. People, 78 Ill. 560; Purrington v. People, 79 Ill. 11; Thatcher v. People, 79 Ill. 597, and other cases referred to in those.

² See Stuart v. Palmer, 74 N. Y. 183; Jewell v. Van Steenburgh, 58 N. Y. 85, and cases cited; State v. Jersey City, 25 N. J. L. 309. The fact that the assessment would have been the same if the owner had had notice does not make it valid: Ulman v. Baltimore, 72 Md. 587. If there is any ground on which a tax levied without notice to a taxpayer can be applied, the party claiming its validity must show that a notice would have been unavailing: Auer v. Dubuque, 65 Iowa 650. The provisions made by the legislature for a review of city assessments cannot be changed by city ordinance: Dwyer v. Hackworth, 57 Tex. 245. But where the party taxed applies to a court of equity to enjoin the tax, but relies exclusively on a failure to follow the law, and alleges no injustice or inequality, his suit will be dismissed; Albany, etc. Co. v. Auditor-General, 37 Mich. 291. And see Baltimore v. Grand Lodge, 61 Md. 280.

effectual, because of the failure of the officers properly to follow them up as required by law. No argument can be admissible in such a case which proposes the acceptance of something else as a substitute for the securities the statute has provided. To substitute anything would require legislation; and even legislation for the purpose would be of doubtful validity if it failed to provide what would fully accomplish the same substantial purpose.¹

Classification of property: Real and personal. It is customary to classify property for taxation as real and personal, and to assess the two classes on somewhat different principles.² The classification is commonly made on common-law distinctions; but this is not necessarily the case, and it will frequently be found that the enumeration of property in statutes as real or personal for the purposes of taxation differs considerably from what it would be for other purposes in the same state.³ The method provided for enforcing the tax may also by implication make some change in the common-law distinctions. A few cases will be referred to. Where land is owned by one person and buildings thereon by another, the two are to be

¹ *Cahoon v. Coe*, 57 N. H. 556; *Stuart v. Palmer*, 74 N. Y. 193. An assessor has no authority to assess for the first time personal property at the time and place he has noticed for the review of his complete roll: *Common Council v. Smith*, 99 Mich. 507. Where the statute provides that if the value fixed by the assessor be greater than that fixed by the taxpayer, it shall be the assessor's duty to notify the taxpayer at the time of the assessment, and to report to the board of supervisors a list of all taxpayers whose lists have been increased, an assessment is void to the extent that it is increased without such notice to the taxpayer and report to said board: *Negley v. Henderson Bridge Co. (Ky.)*, 54 S. W. Rep. 171. A statute authorizing an assessment in a city after the time within which the board of equalization can meet violates the require-

ment of due process of law: *People v. Pittsburg R. Co.*, 67 Cal. 625.

² An assessment which assesses in mass realty and personalty, in disregard of the law, is void: *Northern Pac. R. Co. v. Carland*, 5 Mont. 146. Where certain property had been annually listed as personalty, and so assessed, it was held upon a bill to restrain sale for taxes, that, even assuming the property to be in fact realty, the facts furnished no basis for an attack on the validity of the assessments: *Ledoux v. Bee*, 83 Fed. Rep. 761. Where land is assessed, and a valuable mill is afterwards erected thereon, and it is reported by the tax-collector as an additional assessment, an assessment thereon is not void because the collector gives in the mill as personal property: *Tunica County v. Tate*, 78 Miss. 294.

³ See *Steere v. Walling*, 7 R. I. 317.

separately assessed, and the assessment of the buildings as real estate is proper.¹ It is proper also thus to assess the buildings when the land is exempt from taxation.² Where the law declares that for purposes of assessment and taxation a lease for ninety-nine years "shall be taken and considered as a determinable fee," the property is taxable as though held in fee.³ When land purchased of the United States or of the state has been paid for, or when the right to a complete title has in any way been acquired, it is proper to tax the party who is then, in contemplation of equity at least, the real owner, for the land as land;⁴ but the state may provide by law for taxing im-

¹ *People v. Tax Com'rs*, 80 N. Y. 573, 82 N. Y. 459; *People v. Brooklyn Assessors*, 93 N. Y. 308. This rule applies to buildings erected by a tenant on leased land: *Union Compress Co. v. State*, 64 Ark. 136; *Russell v. New Haven*, 51 Conn. 259; *Milligan v. Drury*, 130 Mass. 428; *People v. Cassidy*, 46 N. Y. 46; *Smith v. Mayor*, 68 N. Y. 552; *People v. Board of Assessors*, 34 Hun 559. Compare *Flanders v. Cross*, 10 Cush. 514. And it applies also even though the land is leased from a municipality: *San Francisco v. McGinn*, 67 Cal. 110; *Burbank v. Board of Assessors*, 52 La. An. 1506. One who builds on lands under a parol license *in perpetuam* given by a camp-meeting association is a tenant in possession, and the house and lot may be assessed to him: *Foxcroft v. Straw*, 86 Me. 76. Where a lease provided that buildings which the lessee might erect on the premises should not become a part of the realty but remain the lessee's property, an assessment of all the property to the lessor was illegal and void: *State v. Mission Free School*, 162 Mo. 332. And a petition to enforce the state's lien for taxes, directed against the lessee without previous assessment of the leasehold, and without averring the nature of the lease, the length of the term, or

the lessee's liability to pay the taxes, is insufficient: *State v. Thompson*, 149 Mo. 441. Under the Massachusetts statute buildings cannot be taxed as real estate except in connection with the land to which they are affixed: *McGee v. Salem*, 149 Mass. 238. Where a street-railroad company may properly be taxed as the owner, for the purposes of taxation, of leased land upon which its power-house and plant are in part situated, such buildings are taxable as part of the realty: *New York Guaranty, etc. Co. v. Tacoma R. & M. Co.*, 93 Fed. Rep. 31, 35 C. C. A. 192. In Kentucky it is held that stores are properly treated as personal property: *Russell v. Carlisle (Ky.)*, 8 S. W. Rep. 14.

² *People v. Brooklyn Assessors*, 93 N. Y. 308; *Russell v. New Haven*, 51 Conn. 259, citing *Brainard v. Colchester*, 31 Conn. 407, and *Lord v. Litchfield*, 36 Conn. 116.

³ *Washington Market Co. v. District of Columbia*, 4 Mackey 416.

⁴ See *Appeal of Maish (Ariz.)*, 37 Pac. Rep. 370; *Bellinger v. White*, 5 Neb. 399; *McMahon v. Welsh*, 11 Kan. 280; *ante*, pp. 135-139. Whether mortgage of land-grant lands was in effect a conveyance so as to subject lands to taxation: *St. Paul & S. C. R. Co. v. McDonald*, 34 Minn. 182.

provements as such, though made upon government lands.¹ Lands bought of the state and not yet paid for are generally made taxable to the purchaser, though his interest may be merely equitable;² and that interest is sometimes taxed as real and sometimes as personal estate.³ It is entirely competent to provide for the assessment of any mere possessory right in lands, whether they are owned by the government or by private individuals,⁴ as well as for any inchoate title to land which has been bought and in part paid for.⁵ It is to be understood, however, that while the statute might treat the interest assessed as either real or personal, no greater interest could be sold than that to which the person was entitled.⁶

Mines and quarries, though the ownership of them is severed from that of the surface, are taxable as real estate;⁷ so is stand-

¹ See *People v. Mining Co.*, 1 Idaho 109; *People v. Lumber Co.*, 1 Idaho 420; *New York, etc. R. Co. v. Yard*, 43 N. J. L. 121. A statute providing that "personal property for the purpose of taxation shall be construed to embrace and include . . . all improvements upon lands the fee of which is still vested in the United States, or in the state of," etc., includes improvements on state lands lying within harbor lines: *Percival v. Thurston County*, 14 Wash. 586. Shed built upon a pier belonging to a city by lessee was held to be the city's property and not taxable as the property of the lessee: *People v. Barker*, 153 N. Y. 98.

² See *Wells v. Savannah*, 87 Ga. 397; *St. Joseph County Com'rs v. Ruckman*, 57 Ind. 96; *Henderson v. State*, 58 Ind. 244; *Taylor v. Robinson*, 34 Fed. Rep. 678. A wharf and warehouse on tide-lands held under contract of purchase from the state are taxable as part of the lands, and not separately: *Gray's Harbor Co. v. Chehalis County (Wash.)*, 63 Pac. Rep. 233.

³ See *Prescott v. Beebe*, 17 Kan. 320; *Bentley v. Barton*, 41 Ohio St. 410. As to assessment of Indian lands

after the Indian title is extinguished by treaty, see *Fellows v. Denniston*, 23 N. Y. 420; *State v. Miami County*, 63 Ind. 497; *Franklin County v. Pennock*, 18 Kan. 579; *Kansas Indians*, 5 Wall. 737; *Peck v. Miami County*, 4 Dill. 370; *Pennock v. Commissioners*, 103 U. S. 44.

⁴ *State v. Moore*, 12 Cal. 56; *People v. Frisbie*, 31 Cal. 146; *People v. Black D. M. Co.*, 31 Cal. 54; *Reiley v. Lancaster*, 39 Cal. 354. It is a good answer, when one is assessed for a possessory claim to land, to deny such claim and plead that whatever claim one has is exempt from taxation: *State v. Central Pac. R. Co.*, 21 Nev. 247.

⁵ See *People v. Shearer*, 30 Cal. 645. Inchoate homestead titles not taxable in Kansas: *Long v. Culp*, 14 Cal. 412; *Chase County v. Shipman*, 14 Kan. 532.

⁶ *Topeka Com. Sec. Co. v. McPherson*, 7 Okl. 332. This case upholds the validity of the act taxing town-site lots. A sale of public land for the tax against the person having the inchoate title would, of course, be incompetent: *Quivey v. Lawrence*, 1 Idaho 313.

⁷ *Sholl v. People (Ill.)*, 61 N. E. Rep.

ing timber, though owned separately from the land whereon it grows.¹ A logging ditch has a value separate and distinct from the land through which it runs, and may be assessed sepa-

1122; *Stuart v. Commonwealth*, 94 Ky. 595; *Sanderson v. Scranton*, 105 Pa. St. 469; *Waterman v. Davis*, 66 Vt. 83. Coal in place belonging to one who does not own the surface under which it lies may be assessed as land apart from the surface: *Consolidated Coal Co. v. Baker*, 135 Ill. 545. And the owner of land who has conveyed it, reserving the coal thereunder, and the right to mine the same, may be taxed for such mining right though there is no proof of the existence of any coal on the land: *Major v. Pavey*, 134 Ill. 19. Coal and similar privileges or interests, if not held in fee or for life but limited to a term of years, are not held as freehold estates, and should not be assessed separately on the land-books to the licensee or lessee: *United States Coal, etc. Co. v. Randolph County Court*, 38 W. Va. 201; *State v. South Penn. Oil Co.*, 42 W. Va. 80. The right to enter on land and manufacture roofing-slate therefrom, so long as suitable material may be found, the owner of the land reserving the full use for farming purposes of all the land not needed for working the ledges, etc., is not taxable to the lessee as real estate: *Hughes v. Vail*, 57 Vt. 41. The prospective production of oil from a leased well is not properly chargeable on personal-property books to the lessee: *Carter v. Tyler County*, 45 W. Va. 806. Where the owner of land conveys the surface and reserves the mineral, he should notify the county commissioners of that fact, and if he fails to do so, and thereafter the lands are as to the entire estate assessed as unseated lands, and are sold as such at a tax-sale, the owner of the surface may purchase at such sale and acquire a good title to the minerals:

Hutchinson v. Kline, 199 Pa. St. 564. If those who are taxed on a mining right claim that their interest is an easement and not taxable, they have the burden of showing such fact: *Sholl v. People (Ill.)*, 61 N. E. Rep. 1122. Assessment against one whose interest was confined to a share in a quarry held not to imply an assessment of the surface to him: *Waterman v. Davis*, 66 Vt. 83. As to taxation of mines and mining claims, see, further, *Waller v. Hughes (Ariz.)*, 11 Pac. Rep. 122; *People v. Henderson*, 12 Colo. 369; *Montana Coal, etc. Co. v. Livingston*, 21 Mont. 59.

¹*Fletcher v. Alcona T'p*, 72 Mich. 18; *Globe Lumber Co. v. Lockett (La.)*, 30 South. Rep. 902. These cases explain that the timber should be assessed in the name of its owner, while the land itself is assessed to the owner of the fee. Trees bought by a lumber company for the purpose of allowing them to stand for several years before cutting them are taxable in the county where they are situated, irrespective of the company's domicile: *Calderon v. Kentucky Lumber Co. (Ky.)*, 32 S. W. Rep. 224. Nursery stock growing on land should be assessed with the land if owned therewith, instead of as personalty: *Wilson v. Cass County*, 69 Iowa 147. The right of a lessee to enter upon railroad lands, which are not taxable to the railroad company, and remove therefrom the merchantable timber, is an interest which is subject to taxation: *Pine County v. Tozer*, 56 Minn. 288. Where a lease of lands contains the right of the vendee to cut off timber during a certain number of years, his special timber interest in the land is taxable: *Freeman v. State*, 115 Ala. 208. A mere right to cut and remove timber

rately therefrom.¹ Riparian rights, until separated by the owner from the abutting shore property, are not independently subject to taxation.² Water-powers and rights in reservoirs of water are interests in the lands upon which they are created.³

A pier constructed in a harbor is taxable as realty.⁴ So is a boom of floating timber chained to fixed piers.⁵ So is a bridge across a river.⁶ So are the aqueducts, pipes, and conduits of water companies,⁷ the water-mains and electric wires of a water

for a series of years is not taxable as realty: *Clove Spring Iron Works v. Cone*, 56 Vt. 602.

¹*Sullivan v. State*, 117 Ala. 214. One who contests an assessment on the mileage value of a log ditch is liable for the length of the ditch proved to be owned by him. He is not entitled to a verdict when the state fails to prove him the owner of the entire length claimed: *Ibid*.

²*State v. St. Paul & D. R. Co.*, 81 Minn. 422. The land between a levee and the river, if used by the riparian owner, or if he derives an income therefrom, is subject to taxation: *Mathis v. Board of Assessors*, 46 La. An. 1570.

³*Winnipiseogee Lake Manuf. Co. v. Gilford*, 64 N. H. 337. See *Amoskeag Manuf. Co. v. Concord*, 66 N. H. 362; *Quinebaug Reservoir Co. v. Union*, 73 Conn. 294; *Union Water Power Co. v. Auburn*, 91 Me. 60; *Boston Manuf. Co. v. Newton*, 22 Pick. 22; *Flax-Pond Water Co. v. Lynn*, 147 Mass. 31; *Lowell v. Commissioners*, 152 Mass. 372. If one holds real estate within a city and in connection therewith an exclusive right to supply the city with water, this intangible right is subject to taxation and valuation like other property: *Stein v. Mobile*, 17 Ala. 234.

⁴*Smith v. New York*, 68 N. Y. 552. See *People v. Tax Com'rs*, 52 N. Y. 659.

⁵*Hall v. Benton*, 69 Me. 346.

⁶*Pittsburg, etc. R. v. Board of Public Works*, 172 U. S. 32; *Keithsburg*

Bridge Co. v. McKay, 42 Fed. Rep. 427; *Alexandria, etc. Co. v. District of Columbia*, 1 Mackey 217; *St. Louis Bridge Co. v. East St. Louis*, 121 Ill. 238; *Hudson River Bridge Co. v. Patterson*, 74 N. Y. 365. Bridge proper and the approach thereto assessable together: *Keokuk & H. Bridge Co. v. People*, 176 Ill. 267. Under the West Virginia statute relating to the taxation of toll bridges and ferries, the assessment must be placed on the personal-property books, the assessment of real estate not being provided for: *Charleston & S. Bridge Co. v. Kanawha County*, 41 W. Va. 658.

⁷*Appeal of Des Moines, etc. Co.*, 48 Iowa 324; *Oskaloosa Water Co. v. Board of Equal.*, 84 Iowa 407; *Paris v. Norway Water-works Co.*, 85 Me. 330; *Dover v. Maine Water Co.*, 90 Me. 180; *Monroe Water Co. v. Frenchtown Tp*, 98 Mich. 431; *Willard v. Pike*, 59 Vt. 202. In the first two of these cases it was held that "the mains of a water company were taxable where the buildings, machinery, etc., were located, though extending into another township; while in the next two cases, water pipes, etc., were held taxable in the town where they were laid, although the company owned no other property in that town, and although the works were situated in another town. Where a water company is chartered to supply a certain county and city therein with water, the mere fact that the company's pipes pass

and light company,¹ the mains, tanks, and service-pipes of gas companies,² the underground pipes of pipe-line companies,³ the foundations, columns, and superstructure of an elevated railroad in a city,⁴ the track of a surface street-railway,⁵ and

through the adjoining county does not make its franchise taxable there: *Spring Valley Waterworks v. Barber*, 99 Cal. 36. Pipes laid under a borough's public streets by a water company, used to convey water from its water-works in an adjoining township, and fire plugs connected with the pipes in the borough, whether considered as realty or personalty, are properly taxable in the borough: *Riverton & P. Water Co. v. Haig*, 58 N. J. L. 295. Prior to the passage of the act of 1893 there was no authority in Michigan to assess a water company's underground pipes as personalty in wards wherein the company had no abiding place: *Grand Haven v. Grand Haven Water Works*, 119 Mich. 652.

¹*Shelbyville Water Co. v. People*, 140 Ill. 545. Electric wires and poles connected with an electric light plant are not part of the realty or appurtenant thereto for purposes of taxation, where some of the poles are on private property, and some are placed on the public highways, under revocable licenses: *Newport Illum. Co. v. Assessors*, 19 R. I. 632. The same case holds an electric switchboard with the connecting wires, and steam dynamos, all of which are removable without injuring the freehold, to be personal property for purposes of taxation: *Ibid.*

²*People v. Martin*, 48 Hun 193. The mains of a gas-light company are appurtenant to its lots, and are only taxable therewith unless otherwise provided by statute: *Capital City, etc. Co. v. Charter-Oak Ins. Co.*, 51 Iowa 31. See *Fall River v. County Com'rs*, 125 Mass. 567. In determining the value of a gas company's

property, the value of the franchises granted by the village, and of the contract with the company furnishing the gas, is not to be considered: *People v. Martin*, 48 Hun 193. In *Commonwealth v. Lowell Gas Light Co.*, 12 Allen 75, the word "machinery" was held to include gas-pipes laid under the streets, and gas-meters. See *Providence Gas Co. v. Thurber*, 2 R. I. 15; *People v. Brooklyn Assessors*, 39 N. Y. 81. Under the provision of a charter authorizing the levy of an *ad valorem* tax on real estate in the city, and on such personal estate "as the city council may designate," it is sufficient for the purpose of taxing gas-pipes, meters, lamp-posts, and the like, that they be designated under the general term "personal estate, and any property of any kind subject to taxation under the laws of this commonwealth:" *Covington Gas-Light Co. v. Covington*, 84 Ky. 94.

³*Pipe-Line Co. v. Berry*, 52 N. J. L. 308; *Tide-Water Pipe Co. v. Berry*, 53 N. J. L. 212. Such line is taxable as real estate in the several townships through which it runs, though the fee of the land and the possession of the surface are in another: *Ibid.*

⁴*People v. Tax Com'rs*, 82 N. Y. 459.

⁵*New Haven v. Fair Haven, etc. R. Co.*, 38 Conn. 422; *People v. Cassidy*, 46 N. Y. 46. The easement in the streets of a city which a street-car company has acquired by contract with the city is an interest in realty, and taxable as such: *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406. Though real estate, the track of a street-railway company is not to

the right of way, road-bed, embankments, bridges, culverts, and tracks of a steam railroad.¹ The rolling-stock of railroads is sometimes treated as personalty, and sometimes as fixtures, under tax-laws; and perhaps, under some laws, it may be both; that is, it may be included in the assessment of the road as realty, but be subject to be taken as personalty on process issued for the enforcement of the tax levied.²

be assessed in parcels — at least without express statutory authority: *State v. District Court*, 31 Minn. 354. Compare *Appeal of Railway Co.*, 32 Cal. 499; *Appeal Tax-Court v. Railroad Co.*, 50 Md. 274; *Philadelphia, etc. R. Co. v. Appeal Tax-Court*, 50 Md. 397. In Michigan the franchises of a street-railway company and the track or road are held — by statute — to be personalty: *Detroit v. Wayne Circuit Judge* (Mich.), 86 N. W. Rep. 1032.

¹ *Tennessee, etc. R. Co. v. East Alabama R. Co.*, 75 Ala. 516; *Purifoy v. Lamar*, 112 Ala. 123; *Neary v. Philadelphia, W. & B. R. Co.* (Del.), 9 Atl. Rep. 405; *People v. Beardsley*, 52 Barb. 105. It is immaterial whether a railroad is laid upon the surface, placed on pillars, or carried through a covered way or tunnel, the structures adapted to sustain it, or facilitate and protect its use are, within the meaning of the law, land, and for them the railroad company is liable to be taxed: *People v. Tax Com'rs*, 101 N. Y. 322. Designating by name improvements upon a railroad's right of way, and giving some of such improvements a separate valuation, do not vitiate their assessment as real estate, and make it one of personal property; it is mere description: *New Mexico v. United States Trust Co.*, 174 U. S. 545. A grain elevator standing on the lands of a railroad company owned by it, and constituting a part of its real estate, is not taxable as personal property of the corporation: *Chi-*

cago, M. & St. P. R. Co. v. Houston County, 38 Minn. 531. But elevators owned by other persons on the right of way of a railroad company are personalty for purposes of taxation: *State v. Red River Valley Elevator Co.*, 69 Minn. 131. See *Taxation of Erie R. Co.*, 64 N. J. L. 123. Where a railroad was constructed on another's land under a parol arrangement with the owner, the works constructed for use for railroad purposes — embankments, dredges, culverts, and tracks, were assessable for taxation to the railroad company: *State v. State Board*, 62 N. J. L. 561. Railroad tracks wrongfully laid do not pass by a tax-sale of the land on a decree against the railroad company canceling its interest therein: *Illinois Central R. Co. v. Le Blanc*, 74 Miss. 650. A private railroad owned by a partnership is real property, and hence should be assessed in the township where situated, and not at the terminal point of such road: *Mitchell v. Lake T'p*, 126 Mich. 367.

² *Chicago & N. W. R. Co. v. Ellson*, 113 Mich. 30, which case held that coal stored in the company's sheds was subject to levy for a tax. In Kentucky cars and engines cannot be sold under a tax-warrant: *Elizabethtown, etc. R. Co. v. Trustees*, 12 Bush 233. Locomotives presumed, as between a railroad company and a tax-collector, to be personalty: *Midland R. Co. v. State*, 11 Ind. App. 433. See *Mabry v. Harp*, 53 Kan. 398; *Williamson v. Jones*, 39 W. Va. 231.

It has been held that in the assessment of mills the machinery contained therein should be included, even though it was personalty by common-law rules, and the owner a non-resident.¹ And the legislature has power to require fixtures to be listed and taxed as personalty.² A seat in a stock exchange has been held not to be personal property within a statute defining personalty for purposes of taxation, and therefore not taxable to a non-resident within the statute providing that a non-resident's personal property should be assessed "to the same extent" as if owned by a resident.³

A ground-rent, being realty, is improperly entered on the personal-property book for taxation; and where no provision has been made for the taxation of rent-charges on land, such property is not taxable.⁴ It is held in Pennsylvania that a direction in a will to executors to sell land in other states, and distribute the proceeds among specified persons, converts such land into personalty so as to subject it to the collateral-inheritance tax.⁵ In some jurisdictions the interest of the holder of a mortgage upon land is by statute made taxable as realty.⁶

¹ *Sprague v. Lisbon*, 30 Conn. 18.

² *Johnson v. Roberts*, 102 Ill. 655. There the fixtures were a steam-engine, boiler, etc., affixed to the soil. Under the West Virginia statute providing for the assessment of taxes, the words "personal property" apply to all fixtures attached to land, if not included in the valuation in the land book: *Carter v. Tyler County Court*, 45 W. Va. 806. The assessors cannot, of their own authority, tax as personal estate what in fact is real: see *Richards v. Wapello County*, 48 Iowa 507.

³ *People v. Feitner*, 167 N. Y. 1. See *San Francisco v. Anderson*, 103 Cal. 69.

⁴ *Willard's Executors v. Commonwealth*, 97 Va. 667.

⁵ *Miller v. Commonwealth*, 111 Pa. St. 321; *Williamson's Estate*, 153 Pa. St. 508; *Coleman's Estate*, 159 Pa. St. 231. See *Drayton's Appeal*, 61 Pa. St. 172; *Commonwealth's Appeal*, 161 Pa. St. 181; *Handley's Estate*, 181 Pa. St. 339. This rule is not adopted in New York;

in *re Swift*, 137 N. Y. 77; in *re Curtiss*, 142 N. Y. 219; in *re Sutton's Estate*, 3 App. Div. (N. Y.) 208.

⁶ See *Savings, etc. Soc. v. Multnomah County*, 169 U. S. 421, and cases there referred to. Under the Massachusetts statute providing that when any person has an interest in taxable real estate as holder of a duly-recorded mortgage, the amount of his interest shall be assessed as real-estate, etc., bonds secured by mortgage to trustees represent a loan or mortgage of real estate, and are taxable to the trustees as real-estate and not to the landholders as personalty: *Knight v. Boston*, 159 Mass. 551. Where lands covered by an existing mortgage lie within two or more taxing districts, the amount of mortgage interest to be taxed in each district will be that proportion which the value of the land lying in that district bears to the whole: *Common Council v. Board of Assessors*, 91 Mich. 78.

The earned premiums of insurance companies doing business in a state are personal property there within a statute relating to the taxation of personalty, and are taxable for municipal purposes.¹

Personal taxes in general. Where one has no domicile within the state, he is not assessable there for any mere personal tax not connected with actual presence of property or business within its jurisdiction, though he himself may formerly have been domiciled in the state, and may at the time be within it.² But when a party is actually domiciled in the state, some latitude in determining where he shall be taxed — though not a broad one — is allowable. Statutes prescribing the place for personal taxation sometimes make use of the word domicile, sometimes inhabitancy, sometimes place of abode, or some similar term or phrase. Probably these are in general used in the same sense, or nearly so, in tax laws.³

"No exact definition can be given of domicile; it depends upon no one fact or combination of circumstances, but from the whole taken together it must be determined in each particular case. It is a maxim that every man must have a domicile somewhere; and also that he can have but one. Of course it follows that his existing domicile continues until he acquires another; and *vice versa*, by acquiring a new domicile he relinquishes his former one. From this view it is manifest that very slight circumstances must often decide the question. It depends upon the preponderance of evidence in favor of two or more places; and it may often occur that the evidence of facts tending to establish the domicile in one place would be entirely conclusive were it not for the existence of facts and circumstances of a still more conclusive and decisive character which fix it beyond question in another. So, on the contrary,

¹ *Phoenix Ins. Co. v. Omaha*, 23 Neb. 312.

² That poll taxes are only to be assessed at the place of one's domicile, see *Herriman v. Stowers*, 43 Me. 497; *State v. Ross*, 23 N. J. L. 517. That one living on land under the exclusive jurisdiction of the federal government is not subject to state taxation on polls, see *Opinions of Justices*,

1 Met. 580. Laborers in a county on a temporary job are not taxable there: *On Yuen Hai Co. v. Ross*, 8 Sawy. 384. A citizen of another state employed for an indefinite period as a laborer for a local corporation was held liable for road duty: *State v. Johnston*, 118 N. C. 1188.

³ *Thorndike v. Boston*, 1 Met. 242.

very slight circumstances may fix one's domicile, if not controlled by more conclusive facts fixing it in another place.¹ If a seaman without family or property sails from the place of his nativity, which may be considered his domicile of origin, although he may return only at long intervals, or even be absent many years, yet if he does not, by some actual residence or other means, acquire a domicile elsewhere, he retains his domicile of origin."² So going abroad with one's family and actually taking up one's residence in a foreign city, but with

¹ *Hall v. Murdock*, 114 Mich. 233.

² *Shaw*, Ch. J., in *Thorndike v. Boston*, 1 Met. 242, 245. See *Bowman v. Boyd*, 21 Nev. 281; *Daniel v. Sullivan*, 46 Ga. 277; *Cabot v. Boston*, 12 Cush. 52; *Lee v. Boston*, 2 Gray 484; *Bulkley v. Williamstown*, 3 Gray 493; *Kilburn v. Bennett*, 3 Met. 199; *Beecher v. Common Council*, 114 Mich. 228; *Detroit v. Macier*, 117 Mich. 76; *Matter of Nichols*, 54 N. Y. 62; *Foster v. Hall*, 4 Humph. 345; *Buchanan v. Cook*, 70 Vt. 168. The last residence of a decedent is not fixed for purposes of taxation by a finding of the probate court for the purpose of settling the estate: *Dallinger v. Richardson*, 176 Mass. 77. The action of the tax-listers of a town in settling the list of a decedent's estate in a certain school district is not conclusive as to the question of the decedent's last residence: *Preston v. King*, 61 Vt. 606. Assessors of taxes, though chosen by the city or town, are public officers. Their acts in omitting to assess a tax against an individual are but expressions of their opinion, and not only do not conclude the town as to the fact of residence, but are not entitled to be considered as evidence upon that subject; and, therefore, in an action to recover a tax resisted on the ground that defendant was not an inhabitant of R., the assessor's records for eight years, showing she was not taxed as an inhabitant of R., were held inadmissible: *Rockland v. Farnsworth*, 93 Me. 178. On an

issue as to plaintiff's liability to assessment in the town of W., it was competent to show by a lister of the town where he claimed residence, and also by the tax-list, that he was not listed in that town; it may also be shown that he paid no taxes there, and was not allowed to vote there: *Meserve v. Folsom*, 62 Vt. 504. In an action to recover back taxes paid to a city on the ground that plaintiff was not, at the time the taxes were assessed, an inhabitant of said city, declarations of his to persons not representing the city, in which he stated that he was a resident of a town in another state, are inadmissible, and so is evidence that prior to the year in which the taxes were assessed he declined to accept a nomination for office, or to serve if elected, because he "had no connection with or interest in the affairs of" the city: *Pickering v. Cambridge*, 144 Mass. 244. A town which taxes a man as a resident takes the burden of showing that he is such, if the right is questioned: *Hurlburt v. Green*, 41 Vt. 490, 42 Vt. 316. Consent by a person to be taxed where he does not reside does not give jurisdiction, and would not bind him: *Blood v. Sayre*, 17 Vt. 609. For a case where evidence was held to show that the lands upon which resided persons seeking to restrain the collection of a tax were within the district assessed, see *Armstrong v. Russellville Dist. T. Co. (Ky.)*, 29 S. W. Rep. 307.

the intention at some time of returning, does not deprive one of his domicile of birth, or the authorities of the place of domicile of the right to tax him.¹ So if one before the time of making an assessment has left the state with the intention of not returning, he is still taxable at the place of his domicile in it unless he has actually acquired a domicile in another state, or at least has fixed upon one and is *in itinere* thither.² If a party having a domicile in the country takes a house in a city and lives there winters, but continues to live in the country summers, this is no change of domicile,³ and he must be assessed for taxation where he thus retains his domicile, even though at the time of assessment he resides at the other place.⁴ A domi-

¹ *Sears v. Boston*, 1 Met. 250; *Otis v. Boston*, 12 Cush. 44; *Carnoe v. Free-town*, 9 Gray 357; *Borland v. Boston*, 132 Mass. 89. See *Hallowell v. Saco*, 5 Me. 143.

² *Borland v. Boston*, 132 Mass. 89; *Colton v. Longmeadow*, 12 Allen 598. *Briggs v. Rochester*, 16 Gray 337, seems to be overruled by *Borland v. Boston*. See *Culbertson v. County Com'rs*, 52 Ind. 361. To effect a change of domicile a residence must be acquired so permanent as to exclude an existing intention to return to the old one, or to make a domicile elsewhere than at the new place of residence. *Hartford v. Champion*, 58 Conn. 268.

³ *Harvard Coll. v. Gore*, 5 Pick. 370. See *People v. Barker*, 70 Hun 397; *Kirby's Appeal*, 134 Pa. St. 309; *Arnold v. Davis*, 8 R. I. 341; *Tripp v. Brown*, 9 R. I. 240. Where a farmer removed his family to a neighboring town to have his children educated, he did not abandon his domicile, and his personalty was not subject to municipal taxation: *Montgomery v. Lebanon (Ky.)*, 64 S. W. Rep. 509.

⁴ *Lee v. Boston*, 2 Gray 484; *Wright v. Boston*, 126 Mass. 161; *Thayer v. Boston*, 124 Mass. 132; *People v. Moore*, 52 Hun 13; *People v. Barker*, 63 Hun 630, 17 N. Y. Supp. 788, 789. In New Jersey, where one is taxed where he

resides on the day appointed for beginning the assessment, the residence is held to be that which would entitle one to vote: *State v. Casper*, 36 N. J. L. 367. A different conclusion was reached in New York under a different statute: see *Bell v. Pierce*, 51 N. Y. 12. Compare *Mugent v. Bates*, 51 Iowa 77; *Greene v. Gardiner*, 6 R. I. 242. An unmarried man was held properly taxed in the county where he spent most of his time, and where his interests were, notwithstanding he kept trunks and clothing in another county: *King v. Parker*, 73 Iowa 757. In *People v. Tax Com'rs*, 68 N. Y. Supp. 548, the statutory presumption that the residence of a taxpayer in a tax district shall be presumed to continue, for purposes of taxation, until he acquires another residence in the state or removes therefrom, was held to be overcome by the uncontradicted evidence. A finding that a person intended to fix his domicile in the city wherein he was taxed for personal property was held to be sustained by the evidence that he had actually resided therein for four years and had built there an expensive house with the evident intention of making it a home; this against his own testimony as to his intention, etc.: *Beecher v. Common Council*, 114 Mich. 228.

cile cannot be lost by mere abandonment, though it be with definite purpose not to return to it.¹

Where one is taxed for his personalty at the place of domicile, it is in general immaterial that some or even the whole of it is at the time out of the state.²

Assessment of personalty. It will be expected of any law for the levy of taxes that it will specifically or otherwise enumerate the kinds of property to be taxed. This is essential, since all property is never taxed, and the assessor is without guide unless the statute supplies it.³ Perhaps the most com-

¹ *Warren v. Thomaston*, 43 Me. 406. See, further, *Stockton v. Staples*, 66 Me. 197; *Nugent v. Bates*, 51 Iowa 77. A change in domicile cannot be effected by an intention in the mind to make the change, unless it is accompanied by an actual change in the place of abode: *Pickering v. Cambridge*, 144 Mass. 244. A wife cannot change domicile for her husband: *Parsons v. Bangor*, 61 Me. 457; *Porterfield v. Augusta*, 67 Me. 556. If one engages in business in another state, but leaves his family permanently at his former place of residence, he remains taxable there: *Culbertson v. Floyd County*, 52 Ind. 361. See *McCutcheon v. Rice County*, 7 Fed. Rep. 558. A merely colorable change of residence to avoid taxation will not be regarded: *Draper v. Hatfield*, 124 Mass. 53. See *Thayer v. Boston*, 124 Mass. 132. If a line runs through one's house he must be taxed in the town which includes the most necessary and indispensable part. He cannot be taxed in both: *Judkins v. Reed*, 48 Me. 386; *Chenery v. Waltham*, 8 Cush. 327. If he is assessed in two towns, his election to pay in one rather than the other is not conclusive, but he is liable in the one of his actual inhabitancy: *Lyman v. Fiske*, 17 Pick. 231; *Chenery v. Waltham*, 8 Cush. 327. See, also, *Hardy v. Yarmouth*, 6 Allen 277, 284. His being taxed in one is not evidence that his

residence and proper place of taxation are not in another: *Mead v. Roxborough*, 11 Cush. 362. See *People v. Atkinson*, 103 Ill. 45. For decisions under the New York statute providing that a person having two or more places of residence shall be taxed upon his personalty at the place where his principal business has been transacted, see *People v. Tax Com'rs*, 2 N. Y. Supp. 674; *People v. Barker*, 17 N. Y. Supp. 789, 63 Hun 630; *Bowe v. Jenkins*, 23 N. Y. Supp. 548, 99 Hun 458. On the general subject, see, further, *Woodard v. Isham*, 43 Vt. 123; *Kellogg v. Supervisors*, 52 Wis. 92.

² *Boyd v. Selma*, 96 Ala. 150. See *Kirtland v. Hotchkiss*, 100 U. S. 491; *Goldgart v. People*, 106 Ill. 25; *Forsman v. Byrns*, 68 Ind. 247; *Lose v. State*, 72 Ind. 285; *Griffith v. Watson*, 19 Kan. 23; *Commonwealth v. Hays*, 8 B. Monr. 1; *Frothingham v. Snow*, 175 Mass. 59; *Horne v. Green*, 52 Miss. 452.

³ *Lott v. Ross*, 38 Ala. 156, citing *Moseley v. Tift*, 4 Fla. 402; *De Witt v. Hays*, 2 Cal. 463. Where the legislature has omitted to provide for the assessment of a certain kind of property, it is not within the province or the power of the court to make the assessment. No property can be assessed until the legislature has made proper provision for this purpose: *Willis's Ex'rs v. Commonwealth*, 97

mon method of assessing one for his personalty is to assess him a gross sum supposed to represent the value of all; but under some statutes an enumeration of articles is required, and under others there is an enumeration of some things and a valuation in gross of all others. Whatever may be the system prescribed by the statute it must be acted upon,¹ and there must be sufficient appearing on the face of the tax-list to show as to anything specified that it is apparently taxable.² But taxability would *prima facie* appear if the description of the thing brings it within the enumeration of things specified in the statute to be taxed, and it is not necessary in listing to negative a possible exemption.³

General description. "Property," in a statute authorizing the imposition of taxes, will be held without further specification to include solvent credits,⁴ such as promissory notes,⁵

Va. 667. Legislation held to be necessary in order to render taxable patented mining lands previously exempt: Taxation of Patented Mining Lands, 9 Colo. 622. The value of a seat in the New York Stock Exchange is "capital invested in business in the state," but is not taxable, as the taxing statute does not cover it: *People v. Feitner*, 167 N. Y. 1.

¹ See *Falkner v. Hunt*, 16 Cal. 167; *People v. Smith*, 28 Cal. 612. Respecting the assessment of personal as distinguished from real property, it is in general sufficient to uphold the proceedings if the description be made with such reasonable certainty as will inform the taxpayer for what he is to be taxed: *State v. Kidd*, 125 Ala. 413. A description of property as "mining stock" is sufficient for purposes of assessment: *San Francisco v. Flood*, 64 Cal. 504. The term "loans on stocks and bonds," used in describing an item of property assessed to a savings bank, sufficiently describes the property: *Savings & L. Soc. v. San Francisco*, 131

Cal. 356. Under the California code providing that a failure to enumerate personal property in detail shall not invalidate the assessment, an assessment not showing the number, kind, amount, or quality of the property is valid: *Dear v. Varnum*, 80 Cal. 86; *Dear v. Weineke*, 94 Cal. 322. Where the law provided that mortgages should be deemed, for purposes of taxation, an interest in the property, an assessment describing the property as a mortgage upon certain premises is sufficient: *Doland v. Mooney*, 79 Cal. 34.

² *Adam v. Litchfield*, 10 Conn. 127; *Whittlesey v. Clinton*, 14 Conn. 72. Compare *Goddard v. Seymour*, 30 Conn. 394; *Hammersley v. Franey*, 39 Conn. 179.

³ *Monroe v. New Canaan*, 43 Conn. 309.

⁴ *Boyd v. Selma*, 96 Ala. 149; *Savings & L. Soc. v. Austin*, 46 Cal. 415; *Pacific Coast Sav. Soc. v. San Francisco*, 133 Cal. 14. See *People v. Park*, 23 Cal. 138; *Louisville v. Henning*, 1 Bush 381; *Catlin v. Hull*, 21 Vt. 152.

⁵ *Ouachita County v. Rumph*, 43 Ark. 525, holding that a note given

for the price of land is taxable as well as the land itself.

bonds issued for the payment of money,¹ deposits in bank,² sums owing on agreements for the purchase of land,³ indebt-

As to when a claim is a "debt due" within the meaning of the statute for the taxing of such debts, see *Bucksport v. Woodman*, 68 Me. 33; *Arnold v. Middletown*, 41 Conn. 206; *Deane v. Hathaway*, 136 Mass. 129; *Hale v. County Com'rs*, 137 Mass. 111. All debts of every kind are taxable under the Mississippi code, and therefore debts due a delinquent taxpayer for daily wages may be levied upon for taxes: *White v. Martin*, 75 Miss. 646. Debts, securities, and obligations are taxable though they are not due: *People v. McComber*, 24 N. Y. Super. Ct. Rep. 902.

¹ A city in assessing property may include its own bonds held by a resident: *People v. Tax Com'rs*, 76 N. Y. 64. Under a statute which expressly includes banks and corporations in the enumeration of taxable owners, and makes "all public loans" taxable except those issued by the commonwealth or the United States, interest-bearing bonds of a city held by a savings bank are taxable: *Wilkes Barre Deposit & Sav. Bank v. Wilkes Barre*, 148 Pa. St. 601. The federal act of July 14, 1870, relating to taxation of railroad bonds, applied only to interest actually paid during the year 1871, not to interest merely payable: *United States v. Louisville & N. R. Co.*, 33 Fed. Rep. 829. Under the Maryland code corporate bonds secured by mortgage on property partly within and partly without the state are taxable: *Simpson v. Hopkins*, 82 Md. 478. Bonds issued by a railroad company chartered by congress are not public stocks or securities, but are taxable as debts due: *Hale v. County Com'rs*, 137 Mass. 111.

² See *Pacific Coast Sav. Soc. v. San Francisco*, 133 Cal. 14, and cases cited. While money deposited in a bank subject to the depositor's sight

check is usually held to be a mere debt against the bank (see *Pacific Coast Sav. Soc. v. San Francisco*, *supra*), yet under the tax-laws of Texas it is regarded as money on hand: *Campbell v. Wiggins*, 2 Tex. Civ. App. 1; *Campbell v. Riviere* (Tex. Civ. App.), 20 S. W. Rep. 730. And see *ante*, p. 92. Where certificates of deposit are taxable, an entry on a pass-book was held to be one: *Oulton v. Sav. Inst.*, 1 Sawy. 695, 17 Wall. 109.

³ *Griffin v. Board of Review*, 184 Ill. 275; *Perrin v. Jacobs*, 64 Iowa 79; *State v. Rand*, 39 Minn. 502; *Rheinbolt v. Raine*, 52 Ohio St. 160. An agreement to sell real estate upon conditions precedent, no notes being given for the purchase-money, time being stipulated to be the essence of the agreement, and neither the legal nor the equitable title to the land being transferred, is not a "credit," and is not taxable: *Branner v. Thomas*, 37 Kan. 282. A contract for the purchase of land by a city for park purposes, providing for possession by the city on part payment, and for a conveyance on payment within ten years, at the city's option, of the rest of the price with interest, and of all taxes levied in the meantime, but declaring, as required by statute, that the agreement created no liability against the city, did not create a debt taxable against the vendors, or a taxable "effect . . . having a marketable value:" *Perrigo v. Milwaukee*, 92 Wis. 236. Under the Minnesota statute providing for the listing and taxation of "credits," a credit consisting of part of the purchase price of land formerly owned in common should not be listed as a whole against the vendors, even though they all live in the same taxing district, but the

edness secured by mortgage,¹ annuities,² etc., but will not be considered as embracing undetermined claims for damages for lands taken by the public,³ or as including a mere

interest of each should be listed against him: *State v. Rand*, 39 Minn. 502.

¹ *People v. Sanilac Supervisors*, 71 Mich. 16. In Pennsylvania mortgages and judgments owing by solvent debtors are taxable whether they bear interest or not: *Perry County v. Troutman*, 144 Pa. St. 361. The New Jersey statute providing that "hereafter no mortgage or debt secured thereby shall be assessed for taxation unless a deduction therefor shall have been claimed by the owner of the land and allowed by the assessors," does not apply to a mortgage on lands which are exempt from taxation, and the mortgage must be assessed to the mortgagee at the place of his domicile: *State v. Lantz*, 53 N. J. L. 578. The Maryland statute concerning the taxation of mortgages does not apply to mortgages given by members of a building association to whom is advanced the matured value of their stock to secure the payment of interest on such matured value and all dues and fines: *Faust v. German Building Assoc.*, 84 Md. 186. In Minnesota mortgages to building associations are taxable as such where the stock of the association has not been taxed: *State v. Redwood Falls B. & L. Assoc.*, 45 Minn. 154. Where personal property is in possession of the mortgager on the first day of March, it is subject to assessment and taxation as his property, and he is not entitled to credit on the assessment for the amount due on the mortgage: *Fields v. Russell*, 38 Kan. 720. Mortgages securing loans of corporations are personal property and taxable under the laws of New Mexico: *Territory v. Co-Operative B. & L. Assoc. (N. M.)*,

62 Pac. Rep. 1097. In California the bonds of private domestic corporations secured by mortgage or deed of trust can only be taxed by assessing the value of the security as an interest in the property encumbered for their payment. They cannot be assessed as mere personal debts or credits, and such an assessment is void: *Fair's Estate*, 128 Cal. 607. A person to whom a sum of money secured by mortgage is payable at the death of one therein named is subject to be assessed for it according to its present value, to be computed by rules of chancery: *State v. Lippincott*, 50 N. J. L. 349. A mortgage canceled in good faith is no longer rated as personal property for the purpose of taxation: *Earles v. Ramsey*, 61 N. J. L. 194. Where the grantor's right in a deed upon condition was to repurchase only, the grantee was not liable to taxation as a mortgagee: *Thomas v. Board of Supervisors*, 67 Miss. 754.

² Annuitants are only taxable in respect of sums which have become due and remain unpaid: *Ex parte McComb*, 4 Bradf. 151; *State v. Cornell*, 31 N. J. L. 374; *State v. Hanson*, 36 N. J. L. 50; *State v. Pettit*, 39 N. J. L. 654; *State v. Shurts*, 41 N. J. L. 279; *Shotwell v. Dalrymple*, 49 N. J. L. 530. The holder of a mortgage bond given to secure an annuity during her life on account of her dower in certain land can be assessed for taxation only on the sum actually due and unpaid on the annuity at the time of the assessment: *State v. Melroy (N. J.)*, 19 Atl. Rep. 732.

³ *Lowell v. Boston*, 106 Mass. 540. See *Hancock v. Whittemore*, 50 Cal. 522.

right to collect wharfage fees in the future,¹ or a seat in a stock exchange, which is merely "a personal privilege of being and remaining a member of a voluntary association with the assent of the associates."² Under a statute taxing all property within the jurisdiction of the state, and classifying credits as personalty, it has been decided that bonds, notes, stock, etc., within the jurisdiction of the state are taxable, without regard to where the debtor lives or where the debt was contracted.³ Debts due to a corporation are not taxable under a statute providing for the taxation of "goods, wares, merchandise, and other stock in trade."⁴ A promise to pay at a future day is not a "sum invested" within the meaning of a statute providing that non-residents doing business in the state "shall be assessed and taxed on all sums invested in any manner in

¹ *De Witt v. Hays*, 2 Cal. 463.

² *San Francisco v. Anderson*, 103 Cal. 69. See *People v. Feitner*, 167 N. Y. 1.

³ *Buck v. Miller*, 147 Ind. 586. Where a statute makes property real and personal "in the city," or "within the city," liable to taxation, it includes intangible personal property such as shares of stock owned by a resident of the city: *Ogden v. St. Joseph*, 90 Mo. 522. Shares of stock in corporations were taxable under the California constitution of 1849, and under the revenue laws in force in that state in 1877: *San Francisco v. Flood*, 64 Cal. 504. Under the Massachusetts statutes the shares of stock of a corporation organized under the laws of that state to build a railroad in a foreign country are taxable to the owner for state, county, or town purposes: *Pratt v. Boston Street Com'rs*, 139 Mass. 559. Where a statute specifying the property to be listed for taxation includes all property not exempt from taxation, whether manufactured, purchased, or otherwise procured, and all property of every sort and description, but does not include stocks upon which the corporation is required to pay the taxes, the stock held by members of a steam-

boat company is to be listed, but not specific property owned by the corporation: *Louisville & E. Mail Co. v. Barbour*, 88 Ky. 73. Shares of stock pledged as collateral security for loans, with power to the pledgee to transfer the shares to his own name, and, in case the loans are not paid, to sell, but which stand on the company's books in the name of the pledgor, are taxable in the pledgor's name: *Ratterman v. Ingalls*, 48 Ohio St. 468. Under the Maryland statute unissued shares of stock cannot be taxed: *Consumers' Ice Co. v. State*, 82 Md. 132. Under the New Hampshire statute providing that the assessment of taxes on money at interest shall only be for the amount in excess of money on which the person whose money is assessed pays interest, national bank stock is to be reckoned as money at interest: *Weston v. Manchester*, 62 N. H. 574. Taxability in village of land contracts owned by non-residents of United States on land not within village, where such contracts are held by agent residing in village: *People v. Willis*, 133 N. Y. 383.

⁴ *New York Biscuit Co. v. Cambridge*, 161 Mass. 326.

said business.¹ Under a city charter authorizing the taxation of such property as "the city council may designate," a designation of "any property of any kind subject to taxation under the laws of this commonwealth," is sufficiently descriptive.²

As a sheriff's certificate of sale does not represent the land but merely a sum of money constituting a lien thereon, such a certificate is subject to taxation during the period of redemption, although the purchaser (no redemption having been made) was afterwards required to pay the taxes assessed against the land for the same period.³

Manuscript containing abstracts of land-titles have been held in Michigan not to be taxable property,⁴ but the contrary rule is announced in Iowa⁵ and in Washington.⁶

¹ *People v. Barker*, 147 N. Y. 31.

² *Covington Gas-Light Co. v. Covington*, 84 Ky. 94. A city ordinance levying a tax for the fiscal year beginning May 1, on all taxable property in the city as of its value six months before that date, as assessed by the city assessor, and equalized by the board of equalization, embraces all property in the city liable for *ad valorem* taxation for the fiscal year named, and not merely all property so assessed and equalized: *Middleboro v. Coal, etc. Bank (Ky.)*, 57 S. W. Rep. 497. Under a city's charter which provided it should have power to assess an *ad valorem* tax on personal and mixed estate "within the city limits," subject to taxation by the city under the laws of the state, a resident of the city was liable for such tax on his boats, of which the city was the home port: *Newport v. Berry (Ky.)*, 19 S. W. Rep. 238.

³ *Miller v. Vollmer*, 153 Ind. 26. A certificate of purchase of realty at a master's sale under a foreclosure decree is taxable: *Wedgbury v. Caswell*, 164 Ill. 622.

⁴ *Perry v. Big Rapids*, 67 Mich. 146. *Campbell, J.*, in delivering the opinion of the court in this case, said: "The constitution requires assessments to be made on property at its cash value. This means not only what may be put to valuable uses, but what has a recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it. . . . These abstract books have no intrinsic value. They are only valuable for the information they contain, and that information is only kept up by their completeness and continued correction. The sale of a complete copy would practically destroy their value in the hands of the

⁵ *Leon Loan & Abstract Co. v. Equalization Board*, 86 Iowa 127, where the court held that as such books had an actual value, and were susceptible of use by any one of ordinary intelligence as a means of profit, they were under the Iowa code personal property liable to taxation, notwithstanding their manuscript char-

acter, and in spite of the fact that they were valuable only for the information they contained.

⁶ *Booth, etc. Abstract Co. v. Phelps*, 8 Wash. 549, holding abstract books taxable as personal property though written in a cipher peculiar to the set, and therefore requiring an expert to use them.

Place of assessment. The general rule that personalty is to be assessed to the owner¹ where he has his domicile has been mentioned.² This rule is applicable to bonds and other choses

owner. So a similar compilation by any one else would have a like result. The value of the books, except as used, is nothing. They resemble in nature, if not precisely, the books which are consulted by any person who makes an income from his acquired knowledge, whether scientific or otherwise: as a surveyor's notes, an author's memoranda, a druggist's receipts, and many analogous things. They may be, and are, very serviceable, but they are not things that the law has made subject to seizure or assessment. If these books were taxable as personalty, they could be made liable to satisfy it, and this, in our opinion, cannot be done." Followed, *Loomis v. Jackson* (Mich.), May 19, 1902.

¹ *Penrose v. Gragard's Succession*, 105 La. An. 146. This case holds that property should not be assessed to a person by whom it is held on consignment for sale. A statute requiring property to be assessed for taxation against the "owner" refers to the person who holds the legal title, absolute or qualified: *Baldwin v. Shine*, 84 Ky. 502. See *Detroit v. Lewis*, 109 Mich. 155. For the purpose of fixing the locality in which personalty is liable to taxation, the holder of the legal title thereto is deemed the owner: *Hall v. Fayetteville*, 115 N. C. 281. Under a statute requiring personalty to be assessed to the owner or to the "unknown owner," an assessment to R. & H. of a tax upon a harvester belonging to H. but in the possession of R. is invalid: *Houser, etc. Manuf. Co. v. Hargrove*, 129 Cal. 90. Evidence of ownership of stock of goods so as to render person liable for tax thereon: *Raymond v. Worcester*, 172 Mass. 205. An assessor can demand of a warehouseman the ownership of property in his posses-

sion: *Bode v. Holtz*, 65 Cal. 106. The right of an assessor, under the New Jersey statute, to estimate property he cannot find, does not authorize the assessment against one of property belonging to another: *State v. Sherrer*, 49 N. J. L. 610. Distillers are not taxable on whisky sold by them, though it is still in their warehouses: *Frankfort v. Gaines*, 88 Ky. 59. An officer may properly assess personal property for taxation to the grantee in a recorded bill of sale thereof, if he has no actual knowledge of a different ownership: *State Trust Co. v. Chehalis County*, 79 Fed. Rep. 282, 24 C. C. A. 584. Bonds and mortgages assigned without consideration to non-resident to avoid taxation held properly assessed to assignor: *People v. Sawyer*, 56 N. Y. Superior Court 790. Assessment to wrong person held not to give a lien on the goods: *Chippewa Hardware Co. Limited v. Atwood* (Mich.), 86 N. W. Rep. 854. Under the Michigan curative law an assessment of pine logs and lumber in the name of a former owner is valid where there is no evidence that the present owners were injured or misled thereby: *Bradley v. Bouchard*, 85 Mich. 18. Question of *idem sonans* as to owner's name: *Detroit v. Macier*, 117 Mich. 76.

² *Ante*, p. 86; *People v. Caldwell*, 142 Ill. 434; *Ament v. Humphrey*, 3 G. Greene 255; *Rhyno v. Madison County*, 43 Iowa 632; *Lexington v. Fishback's Trustee* (Ky.), 60 S. W. Rep. 727; *Rockland v. Farnsworth*, 83 Me. 238; *Frothingham v. Shaw*, 175 Mass. 59; *State v. Hynes*, 82 Minn. 34; *State v. McCausland*, 154 Mo. 185; *Hall v. Fayetteville*, 115 N. C. 281; *Wilcox v. Rochester*, 129 N. Y. 247; *Wheaton v. Mickel*, 63 N. J. L. 525; *Commonwealth v. Amer-*

in action,¹ though the debtor resides out of the state,² and

ican Dredging Co., 122 Pa. St. 386; Commonwealth v. Delaware, L. & W. R. Co., 145 Pa. St. 96, 103; Commonwealth v. Pennsylvania Coal Co., 197 Pa. St. 551; Meade County v. Hoehn, 12 S. D. 468; School Dist. v. County Com'rs, 3 Wash. 154; Northwestern L. Co. v. Chehalis County (Wash.), 64 Pac. Rep. 787. Cattle are to be assessed to the owner where he lives, though kept in another county: Barnes v. Woodbury, 17 Nev. 383; Ford v. McGregor, 20 Nev. 446; Court v. O'Connor, 65 Tex. 334. The action of taxing officers in assessing to the owner, for purposes of taxation, at the place of his residence, personal property which is in another county, and has there been properly assessed by reason of its relation to the business carried on by the owner in the latter county, is not void for want of jurisdiction, but erroneous merely, and can be remedied only by the mode of procedure prescribed by the statute: Clarke v. County Com'rs, 47 Minn. 552. Under a statute for the taxation of "all lands and personal estates within this state," one cannot be assessed on capital invested in another state, or on chattels upon a farm in another state: People v. Tax Com'rs, 23 N. Y. 224.

¹ *Ante*, p. 89; San Francisco v. Mackey, 22 Fed. Rep. 602; Boyd v. Selma, 96 Ala. 144; People v. Park, 23 Cal. 138; San Francisco v. Lux, 64 Cal. 481; Mackay v. San Francisco, 113 Cal. 398; Fair's Estate, 128 Cal. 607; Meyer v. Pleasant, 41 La. An. 645; Ogden v. St. Joseph, 90 Mo. 522; People v. Campbell, 138 N. Y. 543; Commonwealth v. Pennsylvania Coal Co., 197 Pa. St. 551; State v. Tennessee Coal, etc. Co., 94 Tenn. 295; Ferris v. Kimble, 75 Tex. 476; State Bank v. Richmond, 79 Va. 113. Bond-

holders resident in the state are taxable for county or city purposes, upon bonds of domestic corporations, only where they reside, not at the place where the corporation is located if that be different: South Nashville St. R. Co. v. Morrow, 3 Pickle 406. Cash on deposit in a bank is, in legal effect, a chose in action, having its taxable *situs* at the owner's domicile: State v. Tennessee Coal, etc. Co., 94 Tenn. 295. See *ante*, p. 92. Bank deposits representing estate given to widow for her life held taxable where she lived: Hastings's Ex'rs v. Lexington (Ky.), 43 S. W. Rep. 415. In the absence of legislative provision to the contrary, judgments, like other debts, have their *situs* at the creditor's domicile: People v. Eastman, 25 Cal. 601; Meyer v. Pleasant, 41 La. An. 645; Dykes v. Lockwood Mortg. Co., 2 Kan. App. 217; see Board of Com'rs v. Leonard, 57 Kan. 531. Prior to 1894 coal and oil privileges in Kentucky were taxable only where he who owned them resided: Kirk v. Western Gas, etc. Co. (Ky.), 37 S. W. Rep. 849.

² *Ante*, pp. 86, 89-93; Mackay v. San Francisco, 128 Cal. 678; Pacific Coast Sav. Soc. v. San Francisco, 133 Cal. 14; Augusta v. Dunbar, 50 Ga. 387; Scripps v. Board of Review, 183 Ill. 278; Howell v. Gordon (Mich.), 86 N. W. Rep. 1042; Hayne v. Deliesseline, 3 McCord 374. Premiums collected by a foreign insurance company's agent and transmitted by his check to the company at the home office are merely in transit from the policyholders to the company, and gain from their temporary deposit in the state no quality of permanency as personal property so as to subject it to local taxation: Metropolitan L. Ins. Co. v. Newark, 60 N. J. L. 74. That a non-resident holding credits in the state in the hands of an agent becomes insolvent does not relieve

though they are secured by mortgage on lands out of the state,¹ and it applies to shares in corporations, foreign as well as domestic.² To this general rule the legislature may make exceptions, and a few are commonly made.³

Water-craft. Vessels are commonly taxable only at the port of registry,⁴ although the place of enrolment or registration does not necessarily fix the *situs* for taxation,⁵ which may be at the owner's domicile,⁶ or in a state where the owner does not reside if the vessel's business is wholly in such state for an

his credits in the state from taxation: *State v. London & N. W. Am. Mortg. Co.*, 80 Minn. 277.

¹ *Ante*, pp. 90, 91; *Kirtland v. Hotchkiss*, 42 Conn. 426, 100 U. S. 491; *Baltimore v. Baltimore City Pas. R. Co.*, 57 Md. 31; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406; *State v. Gaylord*, 73 Wis. 316. Notes or bonds owned by a non-resident are not made taxable within the state by the fact of being secured upon land within it: *Arapahoe Com'rs v. Cutler*, 3 Colo. 349; *Grant v. Jones*, 39 Ohio St. 506; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406. Credits belonging to a non-resident are not taxed in Michigan, though evidenced by mortgages in the temporary custody of an agent in that state: *Howell v. Gordon* (Mich.), 86 N. W. Rep. 1042. This case refers to *Detroit v. Lewis*, 109 Mich. 155, as plainly implying that the legal title must be in an inhabitant of Michigan to make a credit taxable there.

² *Ante*, p. 87; *Conwell v. Connersville*, 15 Ind. 150; *Madison v. Whitney*, 21 Ind. 261; *Graham v. St. Joseph T'p*, 67 Mich. 652; *Ogden v. St. Joseph*, 90 Mo. 522; *State v. Thomas*, 26 N. J. L. 181; *Watson v. Fairmont*, 38 W. Va. 183. An assessor has jurisdiction to determine that stock in a bank located outside of the state, owned by a resident of a county within the state, is assessable in the county, and the assessment, though it may be

erroneous, is not void: *Van Wagenen v. Supervisors*, 74 Iowa 716.

³ If property be such in its nature as to be capable of having a twofold *situs* for taxation, the legislature may select either as the place where the tax shall be laid: *State v. Runyon*, 41 N. J. L. 98. Goods manufactured by a corporation in the state, and before the assessment is levied sent to its storehouse in another state, are not taxable in the former state: *Greenwoods Co. v. New Hartford*, 65 Conn. 461.

⁴ *Hays v. Pacific Steamship Co.*, 17 How. 596. See *Voght v. Ayer*, 104 Ill. 583; *State v. Haight*, 30 N. J. L. 428; *People v. Tax Com'rs*, 58 N. Y. 242. The assessment of a vessel by name sustained in an admiralty court where the owner had failed to list it: *The North Cape*, 6 Biss. 505.

⁵ *Norfolk & W. R. Co. v. Board of Public Works*, 97 Va. 23.

⁶ *Cook v. Port Fulton*, 106 Ind. 170; *Newport v. Berry* (Ky.), 19 S. W. Rep. 238; *Graham v. St. Joseph T'p*, 67 Mich. 652. Tugs and barges owned by a Virginia corporation, enrolled in Philadelphia but engaged in moving coal from a Virginia town to certain northern cities, never going to Philadelphia, and not assessed for taxation in Pennsylvania or elsewhere except in Virginia, were held taxable in Virginia: *Norfolk & W. R. Co. v. Board of Public Works*, 97 Va. 23. Ocean-going tugs, owned by

indefinite period.¹ Ferries plying between two states are taxable where they are owned,² and not at the place in the other state to which they run.³ If a vessel may by law be assessed in different districts, assessment in one is exclusive of others.⁴

Tangible personalty. Statutes sometimes provide that tangible personal property shall be assessed wherever in the state it may be, either to the owner himself or to the agent⁵ or other person having it in charge; and there is no doubt of the right to do this, whether the owner is resident in the state or not.⁶ Logs, lumber, and similar property may be taxed in the town

a lumber company and exclusively used within the state, and managed and operated by residents of the state, are subject to state taxation, though such tugs are registered at a port situated in a foreign state: *Northwestern L. Co. v. Chehalis County* (Wash.), 64 Pac. Rep. 909.

¹ *National Dredging Co. v. State*, 99 Ala. 462; *Irvin v. New Orleans, etc. R. Co.*, 94 Ill. 105. But a vessel enrolled and licensed or registered under the federal navigation laws does not, where its owner is a non-resident, become subject to the taxing power of a state by merely engaging in business within such state: *Morgan v. Parham*, 16 Wall. 471; *Roberts v. Charlevoix T'p*, 60 Mich. 197; *Graham v. St. Joseph T'p*, 67 Mich. 652; *Johnson v. Debary-Baya Merchants' Line*, 37 Fla. 499.

² *Mobile v. Baldwin*, 57 Ala. 62; *Newport v. Berry* (Ky.), 19 S. W. Rep. 238.

³ *St. Louis v. Ferry Co.*, 11 Wall. 423; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196; *San Francisco v. Talbot*, 63 Cal. 485.

⁴ *Halstead v. Adams*, 108 Ill. 609.

⁵ Assessment to agent without describing him as such, sustained: *Lockwood v. Johnson*, 106 Ill. 334. Assessment to agent held optional under the Michigan statute: *Curtis v. Richland T'p*, 56 Mich. 478. Assessment of stock on a farm to the managing agent of the corporation owner,

held not invalid: *Michigan Dairy Co. v. McKinlay*, 70 Mich. 574.

⁶ *Ante*, pp. 87, 88; *State Railroad Tax Cases*, 92 U. S. 575; *Corfield v. Coryell*, 4 Wash. C. C. 371, 380; *Trammel v. Connor*, 91 Ala. 398; *People v. Niles*, 35 Cal. 282; *Oakland v. Whipple*, 39 Cal. 112; *Ames v. People*, 26 Colo. 83; *State v. City Council*, 2 Speers 623; *Padelford v. Mayor*, 14 Ga. 438; *Pearce v. Augusta*, 37 Ga. 597; *Walton v. Westwood*, 73 Ill. 125; *Supervisors v. Davenport*, 40 Ill. 197; *Lexington v. Fishback's Trustee* (Ky.), 60 S. W. Rep. 727; *Liverpool, etc. Ins. Co. v. Board of Assessors*, 44 La. An. 760; *Lanesborough v. Commissioners*, 131 Mass. 424; *Northampton v. County Com'rs*, 145 Mass. 108; *Curtis v. Ward*, 58 Mo. 295; *Taylor v. St. Louis County Court*, 47 Mo. 594; *People v. Ogdensburgh*, 48 N. Y. 390; *Boardman v. Tompkins Supervisors*, 85 N. Y. 359, and cases cited; *Worth v. Fayetteville*, *Winston's L. & Eq.* 617; *Moore v. Commissioners*, 80 N. C. 154; *Winston v. Taylor*, 99 N. C. 210; *Hall v. Fayetteville*, 115 N. C. 281; *Minneapolis & N. E. Elevator Co. v. Traill County*, 9 N. D. 213; *Grant v. Jones*, 39 Ohio St. 506; *Shriver v. Pittsburg*, 66 Pa. St. 446; *Harrison v. Vicksburg*, 3 S. & M. 581; *Hardesty v. Fleming*, 57 Tex. 395; *Mitchell v. Plover*, 53 Wis. 548. These cases pass upon various questions arising under statutes provid-

where they are situated, stored or piled,¹ or towards which they are in transit;² cattle and sheep may be required by the

ing for such assessment, and apply the rule to non-resident owners of property as well as to residents. Under a statute providing that all personal property within the commonwealth, leased for profit, shall be assessed . . . to the owner or the person having possession of the same, a foreign corporation owning a large number of cash carriers leased for profit to merchants in a city is subject to a local tax for them: *Lamson Consol. Store-Service Co. v. Boston*, 170 Mass. 354. Ice cut on water in one state by a foreign corporation, and stored in such state with the intention of selling it from the corporation's office in another state, is subject to taxation in the former state while it remains there: *State v. Rose* (N. J.), 50 Atl. Rep. 364. A non-resident's property awaiting at a railroad station transportation to the owner is not taxable in the state: *Standard Oil Co. v. Bachelor*, 89 Ind. 1. In order to constitute property in transit, so as to exclude it from taxation in the county where it lies, there must at least be an intention and fixed purpose to remove it within a reasonable time; and an intention to remove it at some future time, depending upon contingencies which may or may not happen, is wholly insufficient: *State Trust Co. v. Chehalis County*, 79 Fed. Rep. 283. And see *ante*, p. 89. A merchant's stock in trade is "goods and chattels permanently located" within a constitutional provision that such goods and chattels are taxable in the city or county where they are so located: *Hopkins v. Baker*, 78 Md. 363. Raw material for the manufacture of paper, paper in process of manufacture, and manufactured paper, being "visible personal estate," must be assessed for

taxes in the township where found: *Warren Manuf. Co. v. Dalrymple*, 56 N. J. L. 449. Personalty received by a resident distributee from the estate of one abroad is liable to taxation in the state under a statute taxing property distributed "to or among the next of kin" of an intestate: *Alvany v. Powell*, 2 Jones Eq. 51.

¹ *Ryerson v. Muskegon*, 57 Mich. 383; *Manistique L. Co. v. Witter*, 58 Mich. 625; *Hood v. Judkins*, 61 Mich. 575; *Plainfield T'p v. Sage*, 107 Mich. 19; *Mitchell v. Lake T'p*, 126 Mich. 367; *Coe v. Errol*, 62 N. H. 303, 116 U. S. 517; *Torrey v. Shawano County*, 79 Wis. 152. Lumber piled at a railway station simply for shipment is not there taxable as property in storage: *Monroe v. Greenhoe*, 54 Mich. 9. So with lumber on manufacturer's premises awaiting transportation to vendee: *Osterhout v. Jones*, 54 Mich. 228. Assessment of lumber to person having control of wharf whereon it lies: *Spanish River Lumber Co. v. Bay City*, 113 Mich. 181.

² *Farmingdale v. Berlin Mills Co.*, 93 Me. 178; *Boyce v. Cutter*, 70 Mich. 539; *Brooks v. Arenac T'p*, 71 Mich. 23; *Pardee v. Freesoil T'p*, 74 Mich. 81; *Corning v. Masonville T'p*, 74 Mich. 177; *Mitchell v. Lake T'p*, 126 Mich. 367; *State v. Bellew*, 86 Wis. 189; *Day v. Pelican*, 94 Wis. 503. As to when logs are or are not to be regarded as "in transit," or "on their way to market," see *Nelson Lumber Co. v. Loraine*, 22 Fed. Rep. 54; *County Com'rs v. Standard Oil Co.*, 103 Ind. 302; *Hill v. Graham*, 72 Mich. 659; *Pardee v. Freesoil T'p*, 74 Mich. 81; *Maurer v. Cliff*, 94 Mich. 194; *Plainfield T'p v. Sage*, 107 Mich. 19; *Elk Rapids Iron Co. v. Helena T'p*, 117 Mich. 211; *Winnipiseogee Paper*

statute to be assessed where they are kept,¹ or where they have been taken to graze or to be fed;² net proceeds of a mine are taxable at the place where ores are brought to the surface through the main workings;³ an army officer has been held taxable on his furniture where he was temporarily stationed in the service;⁴ the property of a private banker who lives in one place and has a bank in another may be taxed as though he resided where the bank is located;⁵ and property used in business may be made taxable where the business is conducted, even though the owner lives elsewhere.⁶ It would be proper,

Co. v. Northfield T'p, 67 N. H. 365. Wood hauled to a wharf and piled there for the definite purpose of being shipped thence to a particular place when the river opens navigation in the spring is merely in transit, and where the owner is a non-resident who simply has the right of piling the wood on the wharf so that he is not for the time being an occupant of the wharf, such wood is not taxable in the town where the wharf is: Creamer v. Bremen, 91 Me. 508.

¹ Trammel v. Connor, 91 Ala. 398; Smith v. Mason, 48 Kan. 586; Pierce v. Eddy, 152 Mass. 594; Michigan Dairy Co. v. McKinlay, 70 Mich. 574; State v. Shaw, 21 Nev. 222; Holcomb v. Keliher, 5 S. D. 438.

² Fennell v. Pauley, 112 Iowa 94; Collins v. Green (Okl.), 62 Pac. Rep. 813; Russell v. Green (Okl.), 62 Pac. Rep. 817; Kelley v. Rhoads, 7 Wyo. 237; Kelley v. Rhoads (Wyo.), 63 Pac. Rep. 935. See County Com'rs v. Wilson, 15 Colo. 90. Under a statute providing that all corporations owning pastures which lie on county boundaries shall list for assessment all their live-stock therein in the several counties in such proportion of the stock as the land in each county bears to the entire pasture, the live-stock of such corporation is liable for taxes assessed thereon in each county, although taxes on the entire herd had been assessed and paid in the county

in which the management of the business was conducted: Nolan v. San Antonio Ranch Co., 81 Tex. 315.

³ Eureka Hill Mining Co. v. Eureka, 22 Utah 447.

⁴ Finley v. Philadelphia, 32 Pa. St. 381. But it has been held that the furniture of an inn is only taxable to the innkeeper at his place of residence: Charlestown v. County Com'rs, 109 Mass. 270.

⁵ Miner v. Fredonia, 27 N. Y. 155. And see Gardiner, etc. Co. v. Gardiner, 5 Greenl. 133; Bates v. Mobile, 46 Ala. 158.

⁶ Danville B. & T. Co. v. Parks, 88 Ill. 170; Hittinger v. Westford, 135 Mass. 258; Putman v. White Lake, 45 Mich. 125; McCoy v. Anderson, 47 Mich. 502; Ryerson v. Muskegon, 57 Mich. 383. As to what is one's place of business, see Barker v. Watertown, 137 Mass. 227. Lumber kept for sale is taxable as "merchants' goods" where situated: Sanford v. Spencer, 62 Wis. 230; Washburn v. Oshkosh, 60 Wis. 453; Torrey v. Shawano County, 79 Wis. 152; Eagle River T'p v. Brown, 85 Wis. 76. Boards held not to lose their character of personal property employed at one of several places of business and there made taxable, because they were to be transported and manufactured at another place: Duxbury v. County Com'rs, 172 Mass. 383. Where owners of lumber commit the custody thereof to one of their number who may

unless the statute gives other directions, to assess to the person

chance to be a tradesman in lumber, to be sold by him for their joint benefit, the common property is, under the statute, taxable at its full value, and not as stock in trade: *Russell v. Mason*, 69 N. H. 359. As to when personalty such as wood or logs is "employed in trade" so as to be taxed in the town where so employed, provided the owner occupies any mill, etc., therein for the purpose of such employment, see *Grover v. Jonesboro*, 83 Me. 142; *Creamer v. Bremen*, 91 Me. 508; *Farmingdale v. Berlin Mills*, 93 Me. 178. The average weekly shipment of cattle, though held but one day, was considered as constituting "stock in trade within the state:" *Myers v. County Com'rs*, 83 Md. 385. Under a statute providing for the taxation of mercantile business in the town where it is carried on, and that the average amount of goods kept for sale during the past year should be the rule of assessment, a horse and wagon used by a non-resident merchant in his business are not taxable: *Shaw v. Hartford*, 56 Conn. 351. Ice belonging to a non-resident dealer, and stored awaiting transportation to another state, is "stock in trade" within a statute declaring that stock in trade, owned by a person not a resident of the town wherein it is located, shall be taxed in such town to the owner or person having charge thereof: *Winkley v. Newton*, 67 N. H. 80. Sewing machines leased by their owner, and of which he may resume possession in case of failure to pay, are properly taxed to him in the town where he has his store and where his business is located, even though such business is under the general direction of the owner's agent in another city: *Singer Manuf. Co. v. County Com'rs*, 139 Mass. 266. Railway cars owned and used by a

manufacturer in his business are taxable in the ward where his warehouse and stock in trade are situated, as appurtenant thereto: *Comstock v. Grand Rapids*, 54 Mich. 641. In order that a stock in trade shall be taxable in the city or town where the owner's store is situated, it must be there: *Hittinger v. Boston*, 139 Mass. 17. Under a statute providing that the personal property pertaining to a merchant's business shall be listed in the town or district where his business is carried on, the buying of personal property outside of the town of the purchaser's residence does not render the property taxable at the place of purchase: *Minneapolis & N. E. Co. v. County Com'rs*, 60 Minn. 522. Where merchandise is shipped into the state and held in cars for distribution to the purchaser, though consigned to the shipper for convenience, it does not make the shipper a merchant within said statute: *State v. Franklin Sugar R. Co.*, 79 Minn. 127. Brokers in whose care live-stock was consigned to a stock-yard company, but who did not have either the possession or control of such stock, were not "merchants" within the Ohio statute so as to be taxable for the average value of the stock during the year: *Hagerty v. Huddleston*, 60 Ohio St. 149. A farmer who buys sheep with a view of fattening and selling them is not a "merchant," and is subject to taxation on all the sheep owned by him on the first day of January: *Jewell v. Board of Trustees (Iowa)*, 84 N. W. Rep. 973. As to when a person "occupies" or "hires and occupies," a store or shop, see *Martin v. Portland*, 81 Me. 293; *Farwell v. Hathaway*, 151 Mass. 242; *Kalkaska T'p v. Fletcher*, 81 Mich. 446. One may be a manufacturer for the purpose of taxation within the Minnesota stat-

in charge of the business the property used therein.¹ And a tax for personal property may be levied against a person at his residence, and another on personalty at his place of business.²

A statute in New York provides that non-residents who do business in that state shall be taxed on the sum invested in such business the same as though they were residents of the state. This statute, it has been held, is not applicable to a manufactured article merely sent into the state for sale by an agent who, after selling, remits the price to his principal.³

ute, though he neither owns nor operates a plant, but contracts with the owners of a plant to have his materials manufactured for him: *State v. Clarke*, 64 Minn. 556. The cutting of ice is not manufacturing: *Hittinger v. Westford*, 135 Mass. 258. Under a statute providing that when a person is doing business in more than one county, the property existing in any of the counties shall be taxed in that county, the capital invested by a manufacturer residing in one county, but doing business in another, is taxable in the latter county, though the business was temporarily suspended during a part of the year, and the property used in carrying on the business, but not the property assessed, was removed to the county where the residence is located: *Dean v. Solon*, 97 Iowa 303. As to what is "machinery employed in a branch of manufacture," see *Ingram v. Cowles*, 150 Mass. 155; *Wellington v. Belmont*, 164 Mass. 142. Where an owner of lumber made no contention before the board of review that the assessor's designation of the lumber as manufacturer's stock was not correct, the board committed no error in not changing the assessment roll in that respect: *State v. Pors*, 107 Wis. 420. The assessment of a manufacturer's stock and tools as ordinary personal property was held but an irregularity which could be appealed from, but which did not invalidate the assess-

ment: *Hopkins v. Brown Tobacco Co.*, 140 Mo. 218.

¹ *Dalby v. People*, 124 Ill. 66. One who has a factory in charge of an agent at a state prison, and is also a jobber of the goods so made at another place, is within a statute providing that goods of manufacturers in the hands of agents shall be located where the agent's business is conducted. He cannot at his election be taxed exclusively at one of the two places: *Selz v. Cagwin*, 104 Ill. 647. The Illinois statute providing property in the hands of an agent to be listed and assessed at the place where the agent's business is carried on does not apply to property which before the time when the assessment is made has in good faith been delivered by the agent to his principal: *People v. Caldwell*, 142 Ill. 434. Where the statute requires property in an agent's hands to be listed in his name, a listing by him in the name of the owner who resides in the same county with the agent does not constitute a defense to an action against the owner for the tax: *Dalby v. People*, 124 Ill. 66.

² *State v. Jersey City*, 61 N. J. L. 135.

³ *Parker Mills v. Tax Com'rs*, 23 N. Y. 242. See *People v. Barker*, 5 App. Div. (N. Y.) 246. Under this statute the assessors have no authority to tax the agent of a foreign corporation who conducts the business for his principal, but who has

Personal property situated and kept in an unorganized county may be subjected to taxation for state purposes in the nearest organized county.¹

Intangible personalty. Sometimes, also, intangible personal property is by statute made taxable where it may be regarded as actually located, rather than at the place of the owner's domicile.² Thus the legislature has power to select as the

not any money invested in it, and such an assessment being illegal and void may be attacked collaterally in a proceeding to enforce payment: *McLean v. Jephson*, 123 N. Y. 142. 'Agricultural machinery manufactured in another state, but brought into and stored in Minnesota for convenience in supplying customers and filling orders, is subject to taxation as other personal property: *State v. Deering & Co.*, 56 Minn. 24.

¹ *Dupree v. Stanley County*, 8 S. D. 30. But under a statute applicable to organized counties only, the assessor of a county to which unorganized counties are attached has no power to assess cattle roaming in such unorganized counties: *Meade County v. Hoehn*, 12 S. D. 500. As to assessment of property in unorganized counties, see, also, *Francis v. Railroad Co.*, 19 Kan. 303; *Pryor v. Bryan* (Okla.), 66 Pac. Rep. 348; *ante*, pp. 237, 415.

² See *ante*, pp. 91-94. The legislature may fix the place where personal property, including moneys, credits, and investments, subject to taxation in the state, may be listed: *Brown v. Noble*, 42 Ohio St. 405; *Sommers v. Boyd*, 48 Ohio St. 648. Money in the hands of an agent in Iowa for investment there is taxable there if in his exclusive control: *Hutchinson v. Board of Equal.*, 66 Iowa 35. Under the Georgia statute a chose in action owned by a resident is taxable wherever the evidence of debt may actually be located, even though

the debtor is a non-resident: *Atlanta Nat. B. & L. Assoc. v. Stewart*, 109 Ga. 80. The *situs* of shares of corporate stock for purposes of taxation may properly be fixed by statute at the place where the corporation is located: *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406. A statute providing that "all the shares of stocks in banks shall be assessed to the owners where such banks are located" was held to impose a tax on stock held by non-residents: *Scandinavian-American Bank v. Pierce County*, 20 Wash. 155. "The state may legislate to authorize a county to levy a tax for county purposes upon the shares of stock of a bank located within the county:" *Stockholders v. Board of Supervisors*, 88 Va. 293. The surplus of a foreign savings bank, invested in the capital stock of domestic banks, state and national, is taxable in New York under a statute providing that the stockholders in every bank, state or national, shall be assessed on the value of their shares of stock at the place where the bank is located, and that such shares shall be assessed like other taxable property owned by individuals: *People v. Coleman*, 135 N. Y. 231. Statutory provisions fixing the *situs*, for purposes of state, county, and city taxation, of bonds issued by domestic corporations, at the place where the corporation is located, regardless of the owners' residences, were held invalid in *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406.

situs for the taxation of mortgages the political subdivision in which the mortgaged premises are located.¹ And under the statutes of certain states, securities held abroad for a resident are excluded from taxation to him where he lives.²

Partnership property. The property of a partnership is generally with much propriety required to be taxed at the place where the partnership business is carried on;³ and it may be

¹ State v. Runyon, 41 N. J. L. 98.

² See Lockwood v. Weston, 61 Conn. 211; Wilcox v. Ellis, 14 Kan. 588; Fisher v. Commissioners, 19 Kan. 414; State v. Howard County Court, 69 Mo. 454, and cases cited; People v. Smith, 88 N. Y. 576; Poppleton v. Yamhill County, 18 Or. 377. A resident of New Hampshire is not taxable there on account of his money deposited in a Massachusetts savings bank, and a fund held in trust by a New Hampshire savings bank or other corporation is taxable in New Hampshire although the owner is elsewhere domiciled: Robinson v. Dover, 59 N. H. 421. The stock of a foreign express company comes within a statute providing that the tax-list of any person need not include any property situated in another state when it can be made satisfactorily to appear to the assessor that the same has been fully assessed in such state; and, unless the contrary clearly appears, the presumption is that such stock has been assessed elsewhere: Lockwood v. Weston, 61 Conn. 211. Though the Vermont statute exempts from taxation "personal estate owned by inhabitants of this state situated and taxed in another state," a debt owing an inhabitant of Vermont evidenced by promissory notes secured by mortgage on lands in another state where the mortgager's interest is taxed as real estate, although the notes and mortgage are kept in the state where the land is, is taxable in Vermont, hav-

ing its *situs* there: Bullock v. Guilford, 59 Vt. 516.

³ Louisville v. Tatum (Ky.), 64 S. W. Rep. 836; Bemis v. Boston, 14 Allen 366, citing Dwight v. Boston, 12 Allen 316; Peabody v. County Com'rs, 10 Gray 97; McCoy v. Anderson, 47 Mich. 502; Torrent v. Yager, 52 Mich. 506; Fairbanks v. Kittredge, 24 Vt. 9. If property of a firm is located outside the state, it should be taxed where the firm conducts its business: Spinney v. Lynn, 172 Mass. 464. Partners who reside in one town but saw logs at a permanent saw-mill in another have a place of business in the latter: Duxbury v. County Com'rs, 172 Mass. 383. Where a firm had its principal business in a certain village, and also manufactured lumber in another town of the same county, property pertaining to the business carried on in the second town was properly assessed there: State v. Hynes, 82 Minn. 34. And where property owned by a firm having places of business in two towns in the same county was assessed in both, the county board of equalization was the proper tribunal to determine which assessment was legal: Ibid. What constitutes a place of business within the meaning of a statute providing that if a partnership have a "place of business" in two or more towns, they shall be taxed in each for the proportion of property there: Cloutman v. Concord, 163 Mass. 444. A "partnership association" organized under a Pennsylvania statute and

assessed in the firm name,¹ even after the death of one of the partners, if the business is continued in the firm name by the surviving partner for the purpose of winding it up.² The assessment should be joint,³ and is a charge upon those only who were partners at the date when it was made.⁴

Trust property. In general, personal property in the hands of a trustee is to be assessed to him at the place of his domicile,⁵ and if one of two trustees is a non-resident the trustee

doing business in New Jersey is taxable there, under the corporation-tax act: *Tide-Water Pipe Co. v. State Board*, 57 N. J. L. 516.

¹ Under the Missouri statutes the assessment of the property of a private banking firm in the business name adopted by it was held valid: *Stanberry v. Jordan*, 145 Mo. 371. The Michigan tax-law provides that for purposes of taxation a firm shall be treated as an individual, and whenever the name of an owner is required to be entered on the assessment roll, if such property is used or occupied by a firm, the firm name shall be used. An assessment not strictly following the firm name was held not invalid, no prejudice being shown: *Hill v. Graham*, 72 Mich. 659. For a case where taxation of a partnership by a wrong name was sustained under peculiar circumstances, see *Lyle v. Jacques*, 101 Ill. 644. A tax-list and warrant showing that a tax upon partnership property was in fact assessed to the joint owners, held sufficient, although the name of the firm, as set down therein, was not strictly accurate: *Van Dyke v. Carleton*, 61 N. H. 574. As to assessments to joint owners generally, see *Meyer v. Dubuque Co.*, 49 Iowa 193.

² *Blodgett v. Muskegon*, 60 Mich. 580.

³ *Swallow v. Thomas*, 15 Kan. 66; *Thibodaux v. Kellar*, 29 La. An. 508; *Oliver v. Lynn*, 130 Mass. 143. See *Hoadley v. County Com'rs*, 105 Mass. 519.

⁴ *Washburn v. Walworth*, 133 Mass. 499. As to who are not taxable as partners, see *Stinson v. Boston*, 125 Mass. 348; *United States v. Glab*, 99 U. S. 225.

⁵ *Mackay v. San Francisco*, 128 Cal. 678; *Lexington v. Fishback's Trustees* (Ky.), 60 S. W. Rep. 727; *Latrobe v. Baltimore*, 19 Md. 13; *Baltimore v. Stirling*, 29 Md. 38; *Detroit v. Lewis*, 109 Mich. 155; *Millsaps v. Jackson* (Miss.), 30 South. Rep. 756; *State v. Willard*, 77 Minn. 190; *State v. Matthews*, 10 Ohio St. 421; *Carlisle v. Marshall*, 36 Pa. St. 397; *Guthrie v. Pittsburgh, C., C. & St. L. R. Co.*, 158 Pa. St. 433; *Green v. Mumford*, 4 R. I. 413; *Catlin v. Hull*, 21 Vt. 152; *Clark v. Powell*, 62 Vt. 442; *Walla Walla v. Moore*, 16 Wash. 339. An assessment of trust property to the trustee was held valid against the beneficiary, though the poll-tax of the trustee was included in the tax-execution under which the land was sold: *Barnes v. Lewis*, 98 Ga. 558. The *situs* of property held in trust by a resident cannot be changed from the county in which the trustee resides by his failure to list the same: *State v. Willard*, 77 Minn. 190. Under the Rhode Island statute providing that all personal property held in trust by any trustee shall be assessed against such trustee in the town where he resides, when the *cestui que trust* is a non-resident, the fact that the trustee is appointed by the court of another state is immaterial; and, when the property consists of a

living in the state may be taxed in respect to their interests;¹ but such property is often made taxable to the persons bene-

mortgage on lands in the state, it is proper to assess it against the trustee in the town where he resides: *In re Ailman*, 17 R. L. 362. Under the New York statute providing that every person shall be taxed in the district where he resides when the assessment is made for all personal property under his control as trustee, an offer made by a trustee residing in one district to an assessor of another district, to submit to a satisfactory assessment, does not estop him from urging the assessor's lack of jurisdiction, in the absence of evidence that the assessment pursuant to the offer was satisfactory; and that he would escape taxation altogether unless assessed in such assessor's district is immaterial in determining whether that assessor had jurisdiction: *People v. Dederick*, 40 App. Div. (N. Y.) 570. Where the estate of a Maine decedent has been administered fully, and has vested in non-resident testamentary trustees, and the property has been removed from the state, they cannot directly be taxed in Maine for such property, although they have qualified as such trustees in the Maine probate court which confirmed their appointment by the decedent, and although the beneficiaries under the trust reside in this state: *Augusta v. Kimball*, 91 Me. 605. A non-resident trustee is not taxable in Rhode Island for trust property without the state, held in trust for two beneficiaries within the state: *Anthony v. Caswell*, 15 R. L. 159. A statute taxing non-residents doing business in the tax-district comprising a certain city, on their business, stock in trade, and solvent credits growing out of such business, does not apply to trust funds held in the city by a non-resident administrator, though he has a business office in the city: *Hall v.*

Fayetteville, 115 N. C. 281. Personal property belonging to a life insurance company is not within a statute providing for the assessment to a trustee of "personal property placed in the hands of any corporation as an accumulating fund for the future benefit of heirs or other persons:" *Portland v. Union Mut. L. Ins. Co.*, 79 Me. 231. A railroad company's trustees, under a statute providing that while the company's property remains in their hands they shall be subject to the duties and liabilities of the company, are, as trustees, liable to the assessment authorized by a statute providing that a county shall make certain public improvements, the costs whereof are to be assessed against the persons and towns benefited: *In re Northampton County*, 143 Mass. 424.

¹ *Davis v. Macy*, 124 Mass. 193. The fact that bonds of a foreign railroad corporation, owned by two trustees, were in the possession of the latter, and deposited for sale and reinvestment in New York city, did not give them a "business situs" in such city so as to render the resident trustee's interest non-taxable in California: *Mackay v. San Francisco*, 128 Cal. 678. Under the New York statute of 1883, where two of three co-trustees resided in New York and the third in another state, the beneficiaries also being non-residents, an assessment of securities which were in the hands of the non-resident trustee was void: *People v. Coleman*, 119 N. Y. 137, followed in *People v. Barker*, 135 N. Y. 656. But under the present laws of New York, where taxable property is held by two or more trustees jointly, each must be assessed in the tax-district where he resides; and where two trustees are residents, and the third is a non-

trustees,¹ and that an assessment on trust property cannot be made against the chancellor as trustee, where no statute authorizes such assessment, but, instead, an assessment against the beneficiaries.² Property in the possession of an assignee for the benefit of creditors is subject to taxation,³ and he should list it.⁴ Property in a receiver's hands is taxable in the jurisdiction where it is situated,⁵ but the owner of it continues liable to be taxed therefor;⁶ and in the absence of an assignment executed for the purpose of making a receiver the owner of personalty in his hands, or of any statute giving such effect to his appointment, the receiver cannot be regarded as owner so as to render him taxable in respect to it,⁷ nor is he required to bring in a list thereof for taxation.⁸

¹ *State v. Irons*, 35 N. J. L. 64; *State v. Staats*, 39 N. J. L. 653.

² *In re Ming*, 39 N. J. Eq. 1.

³ *Youtsey v. Commonwealth* (Ky.), 62 S. W. Rep. 262; *French v. Bobe*, 64 Ohio St. 323; *Wright v. Wigton*, 84 Pa. St. 163. In the case cited from 64 Ohio St. the assigned property was held and operated in the management of a manufacturing business, and the estate was being conducted as before, while in *McNeill v. Hagerty*, 51 Ohio St. 255, the assigned property had been sold, and the proceeds, which were less than the liabilities, were awaiting an order of distribution among the creditors, and were held not taxable.

⁴ *French v. Bobe*, 64 Ohio St. 323.

⁵ *Stevens v. New York, etc. R. Co.*, 13 Blatchf. 104; *Central Trust Co. v. Wabash, St. L. & P. R. Co.*, 26 Fed. Rep. 11; *George v. St. Louis, C. & W. R. Co.*, 44 Fed. Rep. 117; *Ex parte Chamberlain*, 55 Fed. Rep. 704; *Walters v. Western & A. R. Co.*, 68 Fed. Rep. 1002; *Wiswall v. Kunz*, 173 Ill. 110; *Schmidt v. Failey*, 148 Ind. 150; *Spalding v. Commonwealth*, 88 Ky. 135. Money in possession of liquidators

of an insolvent bank held subject to taxation: *State v. Bank of Commerce*, 50 La. An. 696. The receiver of an insolvent corporation continuing its business and using its franchises must pay the franchise-tax assessed while he continues the business: *Mather's Sons Co.*, 52 N. J. Eq. 607.

⁶ A tax levied on personalty in a receiver's hands is not invalid because assessed in the name of the former owner, but may be enforced against the receiver as costs and expenses of the receivership: *Wiswall v. Kunz*, 173 Ill. 110. A corporation, although in a receiver's hands, continues liable to taxation: *Kirkpatrick v. State Board*, 57 N. J. L. 53; *Rosell v. Buck*, 62 N. J. Eq. 575. And see *City Nat. Bank v. Baker Co.* (Mass.), 61 N. E. Rep. 223. Personalty of a corporation is assessable at the place where it was assessable before a receiver was appointed, without reference to his residence: *State v. Red River Valley Elevator Co.*, 69 Minn. 131.

⁷ *City Nat. Bank v. Baker Co.* (Mass.), 61 N. E. Rep. 223. This case

⁸ *Brooks v. Hartford*, 61 Conn. 111. Here it was held that receivers of an insolvent mutual life insurance company who have funds of the insolvent in their hands awaiting an

order of the court making distribution thereof were not "owners" or "trustees" within the meaning of statutes requiring lists and returns for taxation.

ficially entitled, if they are residents of the state.¹ If the fund is in charge of a court, it is taxable in the jurisdiction having control of it,² although personalty having an actual *situs* elsewhere may be taxed where it is.³ It has been held in New Jersey that commissioners who, under the order of a court, sell property and invest the proceeds, are not taxable thereon as

resident, each resident should be taxed for one-third of all the taxable property: *People v. Feitner*, 168 N. Y. 360. In Massachusetts, if, under a statute which authorizes the taxation of trustees as owners, there are several trustees not residing in the same district, the tax should be apportioned among them: *Hardy v. Yarmouth*, 6 Allen 277. But resident and non-resident trustees cannot be jointly assessed: *Stinson v. Boston*, 125 Mass. 348. Where trustees as tenants-in-common own choses in action which are taxable as private property, and some of the trustees reside within and some without the limits of a municipal corporation, the corporation may tax the *pro rata* shares of those trustees residing within, but cannot tax the shares of those residing without, such limits; and this is true, irrespective of the question whether a majority or minority of the trustees resides within the municipality: *Trustees v. City Council*, 90 Ga. 634.

¹ *Hathaway v. Fish*, 13 Allen 267; *Davis v. Macy*, 124 Mass. 193; *Lexington v. Fishback's Trustees* (Ky.), 60 S. W. Rep. 727. A mortgage on Kentucky land and the bonds secured thereby, held by a non-resident, are not subject to taxation in Kentucky, though the trustee in the mortgage resides in that state: *Board of Councilmen v. Fidelity, etc. Co.* (Ky.), 64 S. W. Rep. 470. Under the Massachusetts statutes the personality of a partnership held in trust by a corporation, the profits being payable to the members of the part-

nership, was taxable where the partnership carried on its business: *Ricker v. American L. & T. Co.*, 146 Mass. 346. Formerly, if property was held abroad for a resident of Massachusetts to whom only the income was payable, the fund was not taxable to the beneficiary in that state: *Dorr v. Boston*, 6 Gray 131. But the rule has been changed by a statute which was held valid in *Hunt v. Perry*, 165 Mass. 287. Under the Pennsylvania statute providing that all mortgages, etc., owned by any person whatsoever, except, etc., "and all other moneyed capital in the hands of individual citizens of the state," shall be taxed for state purposes, bonds of a railroad company, held in trust by corporations, are taxable in the names of the beneficial owners: *Commonwealth v. Lehigh Valley R. Co.*, 129 Pa. St. 429.

² *Lewis v. Chester County*, 60 Pa. St. 325. See *Mackay v. San Francisco*, 128 Cal. 678. Under a statute requiring money in litigation in the possession of the county treasurer to be assessed to him, pending the suit, an assessment of it to the plaintiff in the suit is invalid: *San Luis Obispo v. Pettit*, 87 Cal. 499.

³ *Lewis v. Chester County*, 60 Pa. St. 325. See *Supervisors v. Davenport*, 40 Ill. 197. A city has no authority to tax a fund belonging to minors under the control of the probate court of such city, where the curatrix and the minors reside in another city: *State v. McCausland*, 154 Mo. 185.

Property of decedents. To determine where the personal property belonging to the estates of deceased persons shall be taxed, it is necessary to consult statutes. Sometimes personalty is taxable to the estate, as such, at its actual *situs*, if the decedent was not a resident, or at the place of his last domicile if a resident;¹ but sometimes also to the personal representative in his character as such, and at his place of domicile,² or

holds that when a receiver deposits in a bank money acquired by a sale of personalty in his hands, the corporation of which he is receiver remains the legal owner of the fund, and hence the receiver is not liable to be taxed as the owner of the debt created by the deposit. It also holds that a statute authorizing the taxing of property held by assignees does not authorize the taxation of a receiver for personal property held by him.

¹ See *San Francisco v. Lux*, 64 Cal. 481; *Cornwall v. Todd*, 38 Conn. 443; *Millsaps v. Jackson* (Miss.), 30 South. Rep. 756; *Staunton v. Stout's Exr's*, 86 Va. 321. Testator's stock in trade held taxable in place where executor still carries on business: *Cotton v. Boston*, 161 Mass. 8. Under the Iowa statute stocks belonging to an intestate on the first of January prior to his death were properly assessed in his name, though he died before the assessment: *In re Kauffman's Estate*, 104 Iowa 639. Assessment in the decedent's name held void: *McGregor's Ex'r v. Vaupel*, 24 Iowa 436; *Montgomery v. Marydale, etc. Co.*, 46 La. An. 403; *Cook v. Leland*, 5 Pick. 236; *Stephens v. Booneville*, 34 Mo. 323. See *New Orleans v. Ferguson*, 28 La. An. 240. A tax for personalty cannot be assessed to the "estate" of one deceased. It must be assessed to the heirs or to the personal representative: *Fairfield v. Woodman*, 76 Me. 549; *Wood v. Torrey*, 97 Mass. 321. An assessment of personalty against a decedent's heirs without naming them

is void: *Sandy Hill v. Akin*, 77 Hun 537. Since the assessment of taxes on personalty against the owner is a prerequisite to obtaining a judgment against him therefor, the heirs cannot be held liable for taxes assessed against the estate: *State v. Kendrick*, 159 Mo. 631. Personal estate of a decedent is not taxable to his heirs when an administrator is in possession thereof: *Kent v. Exeter*, 68 N. H. 469.

² *Baldwin v. Shine*, 84 Ky. 502; *Wood v. Torrey*, 97 Mass. 321; *Kent v. Exeter*, 68 N. H. 469; *State v. Collector*, 39 N. J. L. 79; *State v. Jones*, 39 N. J. L. 650; *State v. Carson*, 50 N. J. L. 381; *Johnson v. Oregon City*, 2 Or. 327; *Gallatin v. Alexander*, 10 La. 475. Doubtless when it is to be taxed at the decedent's domicile the proper method would be to tax to the personal representative unless the statute gave other direction. See *Revere v. Boston*, 123 Mass. 375; *Cameron v. Burlington*, 56 Iowa 320. That the distributees or beneficiaries are non-residents makes no difference where the administrator resides in the state and as such holds stocks and bonds; he must list them for taxation: *Baldwin v. Shine*, 84 Ky. 502. Property under administration by an administrator with the will annexed, which the life tenant under the will cannot yet require to be paid to him, is taxable in the county where the administrator resides, and not in that where the life tenant lives: *Boske v. Security, etc. Co.* (Ky.), 56 S. W. Rep. 524. A will vests in the executors named therein

in the town where the decedent last dwelt.¹ Credits belonging to the estate of a deceased ward are to be listed for taxation in the county in which the administrator resides, irrespective of the county of the ward's or the guardian's residence.² When there are two or more executors or administrators the personal estate is assessed to the one who has control of it, and at his domicile;³ or the statute may provide that if the taxable personalty is held by executors residing in different tax-districts in the state, each is liable for an equal portion of such property so held.⁴ A tax properly assessed to the personal

a legal control over the estate, which justifies an assessment against them of the personalty of the estate before the will is admitted to probate or letters testamentary are granted: *People v. Barker*, 90 Hun 609, following *People v. Tax Com'rs*, 31 Hun 235. If an owner dies before the day of assessment, and after that day an administrator is appointed in another district, the property is not assessable for that year in the district where the administrator lives: *Hayden v. Roe*, 66 Wis. 288. The executors of a resident of New York, who dies in that state while a member of a California firm, are not taxable in New York as to his share of the partnership property before anything is due them from the firm's surviving members: *People v. Coleman*, 44 Hun 20. Under the statute making the personalty of an estate taxable at the residence of the executor or trustee, the removal of the executor or trustee from an assessment jurisdiction deprives the assessors therein of jurisdiction, though the removal was for that purpose: *People v. Barker*, 36 N. Y. Supp. 725, 14 Misc. Rep. 586.

¹ *Avery v. De Witt*, 72 Mich. 25 (assessment of "forest products").

² *Sommers v. Boyd*, 48 Ohio St. 648.

³ *Burns v. McNally*, 90 Iowa 432; *Brown v. Noble*, 42 Ohio St. 405. See

State v. Jones, 39 N. J. L. 650. Where of the three executors of a deceased resident of New York one lived in Ohio and managed the personalty, and of the others, who lived in New York, one was sick and the other temporarily absent, the personalty was held to be taxed properly in New York, it not appearing that it was not there: *People v. Tax Com'rs*, 38 Hun 536. Where the personal assets of an estate are represented by a certain sum but a small part of which is situated in a foreign state, in which state one of the three executors resides, the assessors are justified in finding that the assets of the estate, less the amount situated outside, are taxable in the tax-district composed of the city in which two of the executors reside: *People v. Gaus* (N. Y.), 61 N. E. Rep. 987.

⁴ See *People v. Feitner*, 168 N. Y. 360. Where one of several executors resides in another ward than that in which an assessment of the personalty of the estate is made, it does not deprive the assessors of jurisdiction to make the assessment, where his co-executor resides in the ward, and the non-resident executor receives notice of the assessment and appears by his co-executor, who raises no objection and does not inform the board of the mistake: *People v. Gaus* (N. Y.), 61 N. E. Rep. 987.

representative may be enforced against him personally,¹ but a tax against the estate as such after the representative was appointed cannot be so enforced,² nor does he become liable unless the tax is assessed directly to him as executor or administrator.³

It has been held that an executor's official residence, so far as the taxation and administration of the assets of the estate are concerned, is in the county of his appointment, and a notice to appear before the county auditors and show cause why property of the estate should not be added to the tax duplicate is not void because of the executor's residing in another state.⁴ But where the property has no *situs* in the state, and neither the personal representative nor a party in interest resides in the state, such property is not taxable there.⁵ The

¹ *Dresden v. Bridge*, 90 Me. 489; *Williams v. Holden*, 4 Wend. 223. See *Payson v. Tufts*, 13 Mass. 493. An administrator cannot be made to account for taxes not due by the succession he represents: *Penrose v. Gragard's Succession*, 105 La. 146.

² *Wood v. Torrey*, 97 Mass. 321. Where a tax was assessed against a person by name after his death, this was no debt against the administrators on which suit could be brought: *Cook v. Leland*, 5 Pick. 236.

³ *Dresden v. Bridge*, 90 Me. 489. An assessment to "S. J. B., Estate of," etc., was held not a direct assessment to the executor or administrator, so as to render him personally liable thereon: *Ibid.* An assessment against the "administrators of the estate of R.," when the representative parties were executors and not administrators, was held not fatally erroneous under the curative statute of Maine, and parol evidence was held admissible to show that executors were the persons intended: *Bath v. Reed*, 78 Me. 276. An assessment held to be of administratives and not of the estate, and not to be invalidated by the fact that one of the three persons assessed was misnamed,

her identity being sufficiently determined by her designation as administratrix: *McLean v. Horn*, 17 N. Y. Supp. 119, 62 Hun 622. An assessment against "C., administrator of the estate of S., deceased, per property as per inventory on file in the superior court," etc., sustained: *San Francisco v. Pennie*, 93 Cal. 465. Where an assessment has been made to one executor of the estate, followed by the words "and others, executors of the estate of," the entry can be changed by the court, in reviewing the assessment, by adding the names of each of such executors: *People v. Gaus* (N. Y.), 61 N. E. Rep. 987. Where there are no special statutory provisions in regard to the assessment of property in an executor's hands, the same method applicable to taxpayers generally will be adopted, and the amount will be determined by the list filed with the assessor, or, if no list is filed, then by such information as the assessor can obtain otherwise: *Batchelder v. Cambridge*, 176 Mass. 384.

⁴ *Gallup v. Schmidt*, 154 Ind. 196.

⁵ *Dallinger v. Rapello*, 14 Fed. Rep. 32.

same is true if the income merely is payable to an inhabitant of the state.¹ Money or property held by an ancillary administrator is taxable by the state granting such administration.²

Personalty left by a decedent will continue to be taxable to the estate or to the representative until actually distributed, or until notice of distribution, but not afterwards.³

In earlier chapters the nature and history of the charges known as succession, transfer, legacy, or inheritance taxes,⁴ and the rulings of the courts upon certain constitutional

¹ *Dallinger v. Rapello*, 15 Fed. Rep. 434.

² *Dorris v. Miller*, 105 Iowa 564.

³ *Nicodemus v. Hall* (Md.), 48 Atl. Rep. 1049; *Hardy v. Yarmouth*, 6 Allen 277; *Carleton v. Ashburnham*, 102 Mass. 348; *Frothingham v. Shaw*, 175 Mass. 59, 61; *Herrick v. Big Rapids*, 53 Mich. 554; *Ex parte McComb*, 4 Bradf. 51; *State v. Leggett*, 40 N. J. L. 308; *Holcombe v. Holcombe*, 39 N. J. Eq. 592. A tax assessed against an estate before the executor has given notice that the estate has been distributed may be recovered against him though he has distributed the estate since the assessment: *Orion T'p v. Axford*, 112 Mich. 179. An executor who, before the next assessment, distributes almost all of the personalty without giving notice to the assessor, is liable for taxes based upon the former assessment: *Vaughan v. Street Com'rs*, 154 Mass. 143. Where taxes were assessed against the estate only, and the executor, after due notice, made his final settlement, and was discharged, he could not be held liable as executor for taxes due from the estate: *State v. Kenrick*, 159 Mo. 631. That the *situs* of taxation of personalty remaining in the hands of executors or administrators as trustees after they have completed their duties as executors, etc., is the domiciles of such trustees, see *MacKay v. San Francisco*, 128 Cal. 678; *Millsaps v. Jackson* (Miss.), 30 South.

Rep. 756; *Clark v. Powell*, 62 Vt. 442.

⁴ *Ante*, pp. 32-34. A "succession-tax" is an excise or duty upon the right of a person or corporation to receive property by devise or inheritance from another under the regulation of the state: *State v. Switzler*, 143 Mo. 287, 328. The right to receive property by inheritance being distinct from the property itself, and the right of testamentary disposition being purely statutory, the legislature has a right to impose any reasonable restriction or duty upon the privilege: *Gelsthorpe v. Furnell*, 20 Mont. 299. Persons claiming a succession to property in Massachusetts under non-resident owners must hold their right subject to the prior right of the state to have the property administered there, in order that taxes may be paid upon the succession: *Graves v. Shaw*, 173 Mass. 205. A deed of gift may under some circumstances be a succession and taxable as such: *United States v. Banks*, 17 Fed. Rep. 322. See *United States v. Leverich*, 9 Fed. Rep. 586. As to consideration in deed of gift to defeat succession-tax, see *United States v. Hart*, 4 Fed. Rep. 292. Grant to take effect in possession or enjoyment after grantor's death, held liable: *In re Ogsbury's Estate*, 7 App. Div. (N. Y.) 71; *Appeal of Du Bois*, 121 Pa. St. 368. After the making of a will the testator conveyed property in trust for uses and purposes set

objections¹ raised against such taxes, have been considered. Reference is made in the margin to cases which decide what estates and interests are subject to these impositions,² what

forth in the will, and such property was held liable to the collateral-inheritance tax: *Seibert's Appeal*, 110 Pa. St. 329. Where bonds were assigned in trust to pay the income to the donor for life and at his death to divide the proceeds among others, the remainders are subject to the transfer-tax: *In re Green's Estate*, 153 N. Y. 292. Beneficiaries in trusts that show, because of the power reserved by the grantor over the property, the grantor's intent that the beneficial enjoyment of the property by the beneficiaries was not to take effect until after his death, are liable for the transfer-tax: *In re Bostwick*, 160 N. Y. 489.

¹*Ante*, pp. 278, 280, 287, 300, 303, 304, 307, 308, 312, 313, 316, 324, 325, 326, 334, 337, 341.

²Rights of succession which accrued before taxing statute came into existence, held not taxable: *In re Seaman*, 147 N. Y. 69. Under the federal act of 1864, a legacy-tax is made payable on the estates of those persons only whose domicile at the time of their death is in the United States: *United States v. Hunnewell*, 13 Fed. Rep. 617. The federal act of June 13, 1898, imposes the duty on the particular legacies or distributive shares, and not on the whole personal estate, the rate being primarily determined by the classifications, and being progressively increased according to the amount of the legacies or shares. A legacy of less than \$10,000 is not taxable: *Knowlton v. Moore*, 178 U. S. 41. A succession-tax may be imposed on property not distributed: *Ferry v. Campbell*, 110 Iowa 290. The donor of a power and not the donee is to be regarded as the "decedent" within the meaning of the Massachusetts

succession-tax, and it is his property only that is subject to the tax provided thereby: *Emmons v. Shaw*, 171 Mass. 410. Where a testator wills property in trust for life, with power to the *cestui que trust* to dispose of it at her death, her appointees take by virtue of the original will, and hence a non-retroactive transfer-tax act passed after the testator's death but before the exercise of the power cannot be enforced against the fund: *In re Harbeck*, 161 N. Y. 211. Where property is left by will to a trustee with power to appoint the legatees, and such appointment is made, the appointees take under the will within a statute imposing a tax on "all property which shall pass by will . . . to any person" other than certain designated relatives and corporations: *In re Stewart*, 131 N. Y. 274. Where a woman's will probated before the transfer-tax law was passed gave her estate to her husband for life, with power to dispose of it by will, and where his will directed her estate to be turned over to executors to be disposed of under her will, held that his will did not execute the power, and that the estate was not subject to the tax: *In re Langdon's Estate*, 153 N. Y. 6. If a testator bequeaths a legacy to a creditor in payment of his claim, and the creditor accepts it, the transfer is taxable: *In re Gould's Estate*, 156 N. Y. 423. Where a will gives testator's estate to his widow on condition that she pay specified legacies to certain of testator's collateral relatives, such legacies are subject to the collateral-inheritance tax; but a gift over of any property of which the widow should die seized out of the residue of the estate given to her, and over which she is given full power, is not taxable:

persons are liable to them or in respect of them,¹ when such taxes accrue,² and how the value or amount of the property

Lauman's Appeal, 131 Pa. St. 346. Where land is devised to a lineal descendant with the provision that the devisee shall pay \$2,000 a year to a collateral descendant, the bequest is taxable: *Lea's Estate*, 194 Pa. St. 524. An estate having been devised to one for life, with remainder in fee to her children surviving her, the devolution of the property on her death was a "succession" within the meaning of the federal act. When a remainder is dependent upon a life-estate in the land it does not take effect as an estate in possession until the life-estate is determined: *Wright v. Blakeslee*, 101 U. S. 174. Where the limitations over in a devise are contingent on the exercise of the power by the life-tenant to dispose of the property during the tenant's life, they are not capable of any reasonably approximate valuation, and are not taxable under the New York act of 1885: *Cager's Will*, 111 N. Y. 343. Legacies the right of possession to which was contingent, held not taxable: *In re Hoffman*, 76 Hun 399, 143 N. Y. 327. Under the Illinois inheritance-law of 1895, which embraces a tax on all property passing by will or descent, an estate in remainder, whether vested or contingent, is taxable: *Ayers v. Chicago Title, etc. Co.*, 187 Ill. 42; see *Billings v. People*, 189 Ill. 472. Under the Tennessee statute taxing "all property in possession or expectancy," and all estates of every kind whatever devised to collateral kindred, vested remainders for life, and contingent remainders absolute, are subject to the tax: *Bailey v. Drane*, 96 Tenn. 16. As to the duty of remaindermen to make return of interest, under the Pennsylvania statute of 1887, see *Coxe's Estate*, 193 Pa. St. 100.

¹ As to who are liable for the taxes

on successions imposed by the federal acts of 1862 and 1864, see *United States v. Allen*, 9 Ben. 154; *United States v. Tappan*, 10 Ben. 284. A devisee of real estate is liable to the succession-tax, although in the division of the estate he receives the value of the land in other property: *Scholey v. Reed*, 23 Wall. 331. The parties designated by the Louisiana statute of 1894, to be charged with the succession-tax, are foreign heirs and legatees: *Sala's Succession*, 50 La. An. 1009. It is from remaindermen alone that present payment of collateral-inheritance tax can be collected under the Pennsylvania statute of 1887, not from the life-tenant, even if remaindermen are not now ascertainable: *Coxe's Estate*, 181 Pa. St. 369. The transfer-tax imposed by the New York statute of 1892 is not a charge upon an estate as a whole, but upon the separate interests of those on whom it devolves, either by will or by statute, and against them personally, and it cannot be assessed until such persons are ascertained: *Westurn's Estate*, 152 N. Y. 93. The tax on a legacy consisting of a direction, without restriction as to amount, to executors to pay the expenses of certain persons at school until they are graduated must be borne by the estate; while that on the sum directed to be given to each of said persons on graduation is to be borne by the legatees: *Handley's Estate*, 181 Pa. St. 339. A will construed so that the collateral-inheritance tax was payable out of the residuary estate: *Lea's Estate*, 194 Pa. St. 524.

² As to the time when a succession or a legacy-tax accrues or becomes payable, see *Clapp v. Mason*, 94 U. S. 589; *Mason v. Sargent*, 104 U. S. 689; *United States v. New York L. Ins. &*

to be assessed is determined.¹ Although the statutes vary greatly, yet most of them agree in imposing the tax — with cer-

T. Co., 9 Ben. 413; *Hellman v. United States*, 15 Blatchf. 13; *United States v. Townsend*, 8 Fed. Rep. 306; *United States v. Hazard*, 8 Fed. Rep. 380; *United States v. Brice*, 8 Fed. Rep. 381; *Ayers v. Chicago Title, etc. Co.*, 187 Ill. 42; *In re Stewart*, 131 N. Y. 274; *In re Curtis*, 73 Hun 185, 142 N. Y. 219; *Roosevelt's Estate*, 76 Hun 257, 143 N. Y. 120; *Mellon's Appeal*, 114 Pa. St. 564; *Bailey v. Drane*, 96 Tenn. 16. The existence of a single uncollected claim does not prevent the collection of a collateral tax on the balance of the estate: *Miller's Estate*, 182 Pa. St. 157. While the debts due from an estate are to be deducted, and the transfer-tax assessed against the shares remaining for distribution, a surrogate need not wait until all the debts are proved before proceeding to assess the tax, as he has power to reserve an amount from the appraised estate adequate to meet the probable debts, and as the statute provides for a refunding of a proportionate part of the tax in case debts are allowed after its payment: *Westurn's Estate*, 152 N. Y. 93. Where property is devised for life with remainder to the testator's heirs, the latter, not being within the exceptions of the law, are not entitled to elect not to pay the inheritance-tax until they come into possession: *Ayers v. Chicago Title, etc. Co.*, 187 Ill. 42.

¹It is held in Pennsylvania that the *status* of the property at the instant of death governs the question of the collateral-inheritance tax, both as to liability and amount: *Drayton's Appeal*, 61 Pa. St. 172; *Mellon's Appeal*, 114 Pa. St. 564; *Williamson's Estate*, 153 Pa. St. 508; *Handley's Estate*, 181 Pa. St. 339. See *Commonwealth's Appeal*, 127 Pa.

St. 435. The amount of the inheritance-tax should be determined from the value of the property at the time of decedent's death, when the right to enjoyment and possession passed to the beneficiaries, and not at the time they actually received it; and expenditures by the beneficiaries in procuring the aid of counsel should not be deducted from the value: *In re Lines's Estate*, 155 Pa. St. 378. In New York, where an estate transferred has an ascertainable value at the time decedent died, the value at that time must be made the basis of the appraisal, whenever made: *In re Davis*, 149 N. Y. 539. And only the property whereof a person dies "seized or possessed" is subject to the tax, and not the income or interest thereafter obtained by the executor: *Vassar's Estate*, 127 N. Y. 1. An appraisement upon a basis of the entire value of the testator's property at the time of his death, instead of the value of the estate received by each person under the will, is not a proper basis for the levy of a tax under the inheritance tax-law of Illinois: *Ayers v. Chicago Title, etc. Co.*, 187 Ill. 42. And under that law the appraisal of an estate in remainder is to be made as of the date of the testator's death and not at the death of the life tenant: *Ibid.* How the value of an estate in remainder is ascertained for the purpose of the transfer-tax, see *Ibid.*; *State v. Melroy* (N. J.), 19 Atl. Rep. 732; *In re Sloane*, 154 N. Y. 109; *In re Davis*, 149 N. Y. 539. For the purpose of determining whether an estate exceeds \$10,000, so as to be subject to the collateral legacy and succession-tax, the expenses of administration are not to be deducted: *Callahan v. Woodbridge*, 171 Mass. 595. A legacy-

tain exemptions¹ — upon all estates situated within the state, whether the person dying seized or possessed thereof is domiciled within or without the state.² Since the inheritance-law

tax paid to the United States under the federal statute of 1898 is to be deducted before paying the state succession-tax under the Massachusetts law; the value of the property concerned being the measure of the tax: *Hooper v. Shaw*, 176 Mass. 190. Where a testator devises the residue of his estate, both real and personal, to his children, and empowers his executors, in their discretion, to pay mortgages on the real estate out of the personalty, the amount of the personalty subject to the transfer-tax is not affected by the executors' making such payment: *In re Livingstone's Estate*, 1 App. Div. 568. The register has authority to pass upon the reasonableness of the charges of settling the estate in order to determine its value on which the tax is to be assessed: *Cullen's Estate*, 142 Pa. St. 18. A provision in a will directing that all legacies and devises shall be free of any succession-tax, and that such tax shall be paid out of the residuary estate, as part of the expenses of administration, does not justify the deduction of the amount of the tax from either the specific or residuary legacies in ascertaining the value of such legacies subject to the tax: *Swift's Estate*, 137 N. Y. 77. As to what should be included in an appraisal of an estate for the transfer-tax, and as to the evidence to be considered on appeal from such appraisal, see *Westurn's Estate*, 152 N. Y. 93. Where the state is not a party to an appraisement for the assessment of the collateral-inheritance tax the court may order a second appraisement on its application alleging an unfair assessment: *In re McGhee's Estate*, 105 Iowa 9. Under the Pennsylvania

statute relating to the collateral-inheritance tax but one appraisement is contemplated, and a second appraisement of property omitted from the first is void, the commonwealth's remedy being by appeal: *Moneypenney's Estate*, 181 Pa. St. 309.

¹ See *ante*, p. 380.

² See *State v. Dalrymple*, 70 Md. 294; *Callahan v. Woodbridge*, 171 Mass. 595; *Greves v. Shaw*, 173 Mass. 205; *Frothingham v. Shaw*, 175 Mass. 59; *Fitch's Estate*, 160 N. Y. 87; *Small's Estate*, 151 Pa. St. 1; *Lines's Estate*, 155 Pa. St. 378. A legatee of shares of stock in a railroad company incorporated in two states may be required to pay the inheritance-tax imposed by the laws of either of them as a condition to his succession to stock issued under the charter of the company from that state: *Moody v. Shaw*, 173 Mass. 375. Where the estate of a testator who had been domiciled in Massachusetts included bonds and stock of foreign corporations, and bonds secured by mortgage on land in New Hampshire, such personalty may for the purpose of taxation be regarded as having a *situs* in Massachusetts: *Frothingham v. Shaw*, 175 Mass. 59. See *Merriam's Estate*, 141 N. Y. 479. Bonds of a foreign corporation kept with a safe-deposit company in New York at the time of the non-resident owner's death are subject to the succession-tax: *In re Whiting*, 2 App. Div. (N. Y.) 590. Under the New York statute of 1887 personal property of a resident decedent, wherever situated, is subject to the transfer-tax when brought into the state for distribution: *Swift's Estate*, 137 N. Y. 77. But it is held in Iowa that tangible property located in another state, de-

and the general tax-law are not *in pari materia*, it is not necessary that property assessable under the former should also be assessable under the latter.¹

Property of persons under guardianship. The place of taxation of the personal estate of persons under guardianship is different under different statutes. Under some it is taxed where the ward has his domicile;² under others it is taxable to the guardian who has it in his possession, as it would be if it were owned by himself;³ and in any case, probably, this would be the rule if the guardian living in the state had possession of the property, and the ward were a non-resident.⁴

scending to collateral relatives under a resident testator's will, is not subject to the inheritance-tax: and the fact that the executor brings into Iowa for distribution the proceeds of a sale of such property does not render them liable to the tax: *Weaver's Estate v. State*, 110 Iowa 328. For the doctrine of equitable conversion of a decedent's lands into personalty through sale by executors, see *ante*, p. 94.

¹ *Knoedler's Estate*, 140 N. Y. 377. This case holds that life insurance policies payable to the insured, his executors, etc., are assets of his estate, and subject to taxation under the collateral-inheritance tax-law.

² *Vogel v. Vogler*, 78 Md. 353; *Louisville v. Sherley*, 80 Ky. 71; *School Directors v. James*, 2 W. & S. 568; *West Chester School Dist v. Darlington*, 38 Pa. St. 157; *Mason v. Thurber*, 1 R. I. 481. See *Kirkland v. Whately*, 4 Allen 462. Funds of a ward in the hands of a guardian, invested in the city where both reside, are assessable there only, although the guardian qualified and made an *ex parte* settlement of accounts as such in another city: *Hughes v. Staunton*, 97 Va. 518.

³ *West Chester School Dist. v. Darlington*, 38 Pa. St. 157. Under the Maryland code personalty in

a guardian's hands is taxable in the county where the guardian was appointed, though it is outside the state, and both guardian and ward are non-residents: *Baldwin v. County Com'rs*, 85 Md. 145. The removal of a guardian and ward from the state, while it may be ground for the discharge of the guardian by the county court, does not affect the validity of an objection by her, as guardian, against the taxing of the ward's property which has no taxable *situs* in the state: *Maxwell v. People*, 189 Ill. 603.

⁴ *Hinkhouse v. Wilton*, 94 Iowa 254; *Dibble v. Leppert*, 47 La. An. 792; *Payson v. Tufts*, 13 Mass. 493; *Baldwin v. First Parish*, 8 Pick. 494; *State v. Burr*, 143 Mo. 209. And the guardian is personally liable for the tax: *Payson v. Tufts*, *supra*. Bonds held by a non-resident guardian were held taxable at his residence and not to the ward in the state: *Kinehart v. Howard*, 90 Md. 1. Property of a ward is taxable, under the Maryland code, as property in his guardian's hands, where the ward became of age before the tax was levied, but the guardian had not settled his final account in the orphan's court, as required by law: *Baldwin v. County Com'rs*, 85 Md. 145. Under the Michigan statutes of 1882 the assessment of a guardian on an undistributed

Assessment of corporations: *In general.* All private corporations are expected to be assessed for taxation under general laws, unless they are expressly exempt by charter or other law;¹ and if not expressly mentioned in an enumeration of taxables, they may be held included under the term "persons" or "inhabitants."² This, however, is matter of construction only, and it may be quite apparent on the face of the statute that such was not the intent.³ The proper place for the taxa-

legacy to his infant ward is invalid; and the guardian's previous acquiescence, as a member of the board of review, cannot bind the ward: *Barstow v. Big Rapids*, 56 Mich. 35. The lending of a ward's money by guardian at his own discretion, after permission has been granted him by the court to take and use such funds at a certain rate of interest, is an appropriation of the funds to his use, and renders him liable to taxation thereon: *Clayton v. Tupele* (Miss.), 28 South. Rep. 994. Under a statute requiring that one be assessed in the town or ward where he lives for "all personal estate in his possession, or under his control as agent, trustee, executor, or administrator," the committee of a lunatic's estate is not included: *People v. Tax Com'rs*, 100 N. Y. 215. The fact that the assessment of a lunatic shows, in addition to his name, the name of his committee and the latter's place of business, does not invalidate the assessment: *People v. Barker*, 67 Hun 649, 137 N. Y. 631. Assessment held to be of the lunatic: *Ibid.*

¹ See *Portland Bank v. Apthorp*, 12 Mass. 252; *Bank v. Commonwealth*, 19 Pa. St. 144. The real and personal property of domestic corporations should be taxed precisely as the property of an individual. Any law which would permit a corporation's personalty to escape taxation while that of the same character owned by a private person is assessable and taxable would be un-

constitutional: *State v. St. Paul Trust Co.*, 76 Minn. 423.

² See *Baldwin v. Trustees*, 37 Me. 369; *People v. McLean*, 80 N. Y. 254; *Louisville, etc. R. Co. v. Commonwealth*, 1 Bush 250. The phrase "any person or persons whatsoever," in certain taxing acts, was held not broad enough to include corporations: *Fox's Appeal*, 112 Pa. St. 337; *Hunter's Appeal*, 10 Atl. Rep. 429. In Kansas the valuation of property by a railroad company for the purposes of taxation is to be accepted the same as that of a natural person: *Kansas, etc. R. Co. v. Wyandotte County*, 16 Kan. 587. Otherwise as to realty: *St. Joseph, etc. R. Co. v. Smith*, 19 Kan. 225.

³ *Hartford F. Ins. Co. v. Hartford*, 3 Conn. 15; *Cherokee, etc. Ins. Co. v. Justices*, 28 Ga. 121; *Fox's Appeal*, 112 Pa. St. 337; *Hunter's Appeal* (Pa.), 10 Atl. Rep. 429. See *British, etc. L. I. Co. v. Tax Com'rs*, 1 Keyes 303; *Parker Mills v. Tax Com'rs*, 23 N. Y. 242. A constitutional provision that the personal property of residents of the state shall be subject to taxation in the county where the resident *bona fide* resides, and not elsewhere, refers only to natural persons and not to corporations, and is not, therefore, contravened by a statute dividing taxes on railroad rolling-stock among the counties in which the line is located: *Baltimore, C. & A. R. Co. v. Commissioners* (Md.), 48 Atl. Rep. 853. A statute providing that all personalty within or with-

tion of a corporation in respect of its personalty is the place of its principal office, unless some other rule is prescribed by statute.¹

out the state shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May does not apply to foreign corporations, as the word "inhabitant" means one whose domicile is in the place referred to, and the domicile of a corporation is in the state of its origin, which domicile it retains irrespective of the residence of its officers or the place where its business is transacted: *Boston Ins. Co. v. Boston*, 158 Mass. 461.

¹ *Board of Councilmen v. Stone* (Ky.), 58 S. W. Rep. 373; *Portland, etc. R. Co. v. Saco*, 60 Me. 196; *Pacific R. Co. v. Cass County*, 53 Mo. 17; *Green Mountain, etc. R. Co. v. Savage*, 15 Mont. 189; *State v. Person*, 32 N. J. L. 134; *Western Transp. Co. v. Scheu*, 19 N. Y. 408; *People v. McLean*, 80 N. Y. 254; *Union S. B. Co. v. Buffalo*, 82 N. Y. 351; *Glue Factory v. McMahon*, 15 Alb. (N. Y.) N. Cas. 314; *Chesebrough Manuf. Co. v. Coleman*, 44 Hun 545; *Pelton v. Transp. Co.*, 37 Ohio St. 450; *Commonwealth v. American Dredging Co.*, 122 Pa. St. 386; *Orange & A. R. Co. v. Alexandria*, 17 Grat. 176. As to where corporation's principal office is deemed located, see *Twin City Gas Works v. People*, 156 Ill. 387; *Detroit Transp. Co. v. Board of Assessors*, 91 Mich. 382; *McLean v. Wyandance, etc. Co.* 66 Hun 122, 138 N. Y. 158; *Austen v. Hudson River Tel. Co.*, 73 Hun 96; *People v. Barker*, 87 Hun 341, 91 Hun 590, 594; *State v. Tennessee Coal, etc. Co.*, 94 Tenn. 295; *Milwaukee Steamship Co. v. Milwaukee*, 83 Wis. 590. The rule stated in the text is applicable to railroad companies: *Appeal Tax Court v. Railroad Co.*, 50 Md. 274. See *Richmond, etc. R. Co. v. Commissioners*, 84 N. C. 504; *Boston,*

etc. Glass Co. v. Boston, 4 Met. 181; *State v. Tennessee Coal, etc. Co.*, 94 Tenn. 295. The personal property of a life insurance company is taxable to the company where it has its principal place of business: *Portland v. Union Mutual L. Ins. Co.*, 79 Me. 231. Under the Michigan tax-law the rolling-stock and tools of a street railroad are taxable where the company's principal business office is: *Detroit v. Wayne Circuit Judge* (Mich.), 86 N. W. Rep. 1032. And since the company's franchise by which it acquires the right to use the streets of a municipality should be treated as a part of the road-bed and attaching to every part of the same, such franchise must be treated as personalty within a statute declaring that the track or road of any such company shall be held to be personal property and assessed for taxation in the township, village, or city where the same is used or laid: *Ibid.* The franchise of a water company having its chief office and place of business in a city is subject to taxation by the city, though the pumping station, reservoirs, and a part of its mains are without the city: *Board of Councilmen v. Stone* (Ky.), 56 S. W. Rep. 679. Where a steamship company has part of its assets invested in ships that are building out of the state, it may be taxed in respect of them at its home office: *People v. Tax Com'rs*, 64 N. Y. 541. A Maryland corporation is taxable at its business office in respect to all its stock, though part of its property is situated abroad and part of its stockholders reside abroad: *American Coal Co. v. Commissioners*, 59 Md. 185. If a manufacturing corporation is required to be assessed "where

Corporations of different kinds, as railroads, insurance, banking and manufacturing corporations, are often classified separately for taxation.¹ The character of a corporation which, by its charter, has various distinct and different franchises, is to be ascertained for the purposes of state taxation by the character of the principal business in which it is engaged at the time of assessment.² If a corporation's return for assessment is to be made on blanks furnished from the proper office, the return must be made even though the furnishing of the blank has been neglected.³

The method of taxing these artificial bodies, when not fixed by the constitution or by charter, is left to the legislative judgment,⁴ and the diversity actually met with under tax-laws is very great. It has been held that a tax on corporate bonds to

the operations of the company are to be carried on," this means the manufactory, and not the place of financial operation: *Oswego Starch Factory v. Dolloway*, 21 N. Y. 449. Capital stock of a domestic corporation invested in manufacturing plants in other states is not taxable in Pennsylvania: *Commonwealth v. Westinghouse, etc. Co.*, 151 Pa. St. 265. A corporation formed by the consolidation of a domestic and a foreign corporation is to be deemed a domestic corporation for the purpose of the taxation of its property, subject to taxation as of its domicile: *Keokuk & H. Bridge Co. v. People*, 161 Ill. 132. A corporation chartered in two states has a domicile in both: *Bridge Co. v. Mayer*, 31 Ohio St. 317.

¹ See *post*, pp. 693-720. It is competent for a state legislature to classify corporations chartered under the laws of the state, designating those having their principal places of business or chief works outside of the state as "non-resident corporations," and imposing upon them a license-tax greater than is imposed upon those having their principal places of business and chief works

within the state: *Blue Jacket Consolidated Copper Co. v. Scherr* (W. Va.), 40 S. E. Rep. 514. An incorporated social society, the capital stock of which is divided into shares, is a business corporation for purposes of taxation under the provisions of the Rhode Island statutes: *Newport Reading Room, etc., Petitioners*, 21 R. I. 440. A railroad company operating a telegraph line for its trains and not for profit is not a "telegraph operating . . . miles of wire," and therefore subject to taxation as such: *Adams v. Louisville, N. O. & T. R. Co.* (Miss.), 13 South. Rep. 932. How assessment to be made against a telegraph company: *People v. Dolan*, 126 N. Y. 66. In Iowa the property of telephone companies is to be assessed in the manner provided for taxing telegraph companies: *Iowa Union Tel. Co. v. Board of Equal.*, 67 Iowa 250.

² *International Nav. Co. v. Commonwealth*, 104 Pa. St. 38.

³ *Pacific Hotel Co. v. Leib*, 83 Ill. 602. See *Lake Shore & M. S. R. Co. v. People*, 46 Mich. 193.

⁴ *Minot v. Philadelphia, etc. R. Co.*, 18 Wall. 206, 231; *Porter v. Rock Island St. R. Co.*, 76 Ill. 561.

be paid by the corporation and deducted is not a tax on the corporation.¹

Franchise taxes. An excise-tax on the franchise of a corporation is sometimes imposed.² Where a tax is plainly im-

Haight v. Railroad Co., 6 Wall. 15; Railroad Co. v. Jackson, 7 Wall. 262; United States v. Railroad Co., 17 Wall. 322; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232; Commonwealth v. Lehigh Valley R. Co., 104 Pa. St. 89, 186 Pa. St. 235. If laid by value, this means the actual, not the par value: Commonwealth v. Lehigh Valley R. Co., 104 Pa. St. 89. But the par or face value may by statute be adopted as their value for taxing purposes: Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232; Jennings v. Coal Ridge, etc. Co., 147 U. S. 147; Commonwealth v. Martin, 107 Pa. St. 185; Commonwealth v. Delaware Div. Canal Co., 123 Pa. St. 594. A corporation is not liable to the commonwealth for a tax on a mortgage issued by private persons upon property subsequently purchased by the corporation, where it appears that the corporation had not assumed the mortgage as its own indebtedness: Commonwealth v. Union Traction Co., 192 Pa. St. 507. The same case holds that stock-trust certificates issued on a lease by a traction company of systems of other traction companies, the lessor agreeing to pay a rental equal to dividends of a certain per cent on the agreed value of the capital stock of the leased companies, are not debts of the lessor company upon which a tax may be laid.

² A state may tax the franchise or the capital of a corporation by such rule as it may prescribe, even though it be arbitrary: Minot v. Philadelphia, etc. R. Co., 18 Wall. 206. Under a constitutional provision that "nothing in this constitution shall be con-

strued to prevent the general assembly from providing taxation based on income, licenses, or franchises," it is within the legislative power to declare what corporations or companies possess franchises subject to taxation; and an unincorporated company may be required to pay an income tax: Providence Banking Co. v. Webster County (Ky.), 57 S. W. Rep. 14. A franchise tax cannot, it is held in Massachusetts, be imposed upon a copartnership, as it has no franchise or special privilege to be taxed: Gleason v. McKay, 134 Mass. 419. A joint-stock association formed by private agreement between individuals is not taxable under a statute providing that all moneyed or stock corporations deriving an income or profit from their capital stock or otherwise shall be liable to taxation: People v. Coleman, 133 N. Y. 279; Hoey v. Coleman, 46 Fed. Rep. 221. A joint-stock association is not subject to taxation under the Pennsylvania statutes imposing taxes on the capital stock of "incorporated" companies: Gregg v. Sanford, 65 Fed. Rep. 151, 12 C. C. A. 525. Where a corporation is organized under a statute giving a right to establish and maintain a boom on a navigable stream, and to collect tolls for logs, possession of such right is a franchise, and taxable as such: Chehalis Boom Co. v. Chehalis County (Wash.), 63 Pac. Rep. 1123. Under a statute providing that every corporation "having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons," shall pay to the state a tax on its franchise, an agri-

posed on the corporate privilege, it must be sustained, even though in effect it duplicates the burden on the corporate body.¹ But such taxes are often measured by a standard which suggests the question whether in fact they are not taxes on property, in which case they might not perhaps be admissible.² A case in illustration is that of a percentage on the capital stock paid in: which in Massachusetts has been held to be not a property tax but a tax on the franchise.³ Such a tax may obviously be either the one thing or the other, and the phraseology of the statute under which it is laid may determine which it is in the particular case. So in the same state a tax on savings banks measured by their deposits has been held a franchise tax,⁴ and the same ruling has been had in Connecticut,⁵ in

cultural association empowered by charter to sell pools on races run on its grounds must pay such a tax: *Latonia, etc. Assoc. v. Donnelly* (Ky.), 50 S. W. Rep. 251. The right of a domestic railroad corporation to use a highway crossing is a special franchise and taxable: *New York, L. & W. R. Co. v. Rall*, 66 N. Y. Supp. Rep. 748. In New Jersey manufacturing companies subject to the franchise-tax are taxable on the basis of their outstanding capital stock, regardless of the purpose for which it was issued: *Electric Storage Battery Co. v. State Board*, 60 N. J. L. 66. A railroad corporation formed by purchasers of railroad property is liable to the percentage tax on the amount of its capital stock required by the New York statute of 1886: *People v. Cook*, 47 Hun 467. And so is a corporation formed by the consolidation of previously existing corporations, although each of the consolidated companies paid such tax on its own incorporation: *People v. Rice*, 57 Hun 486. Incorporation of certain societies without payment of tax: *State v. Lesueur*, 99 Mo. 552. The Minnesota statute providing for the method of taxing corporations refers to the tangible property specifically

listed and assessed, and does not include franchises: *State v. Duluth Gas & Water Co.*, 76 Minn. 96. A corporation which, since its organization, has preserved its existence by electing officers annually, but which has manufactured nothing because enjoined from using its patents, is not liable to taxation on its franchise: *In re Faure's Electric L. etc. Co.*, 43 N. J. Eq. 411.

¹ See *ante*, p. 406.

² Taxes upon the privileges of corporations, being taxes upon their property (see *Wilmington & W. R. Co. v. Reid*, 13 Wall. 264), are subject to the limitations of the Mississippi constitution requiring the property of corporations to be taxed like that of individuals in proportion to its value: *Gulf & S. I. R. Co. v. Hewes* (U. S.), 22 Sup. Ct. Rep. 26.

³ *Portland Bank v. Apthorp*, 12 Mass. 252. See *Trustees v. Roome*, 93 N. Y. 313.

⁴ *Commonwealth v. People's Savings Bank*, 5 Allen 428; *Provident Inst. v. Massachusetts*, 6 Wall. 611; *Commonwealth v. Savings Bank*, 123 Mass. 498. For definition of excise tax, see *Oliver v. Washington Mills*, 11 Allen 268, 272.

⁵ *Coite v. Society*, 32 Conn. 173; *Society v. Coite*, 6 Wall. 594, questioned

Maine,¹ and in Vermont;² while in New Hampshire the contrary has been held.³ So in Massachusetts a tax measured by the excess of the market value of all the corporate stock over and above the property otherwise taxable,⁴ and one measured by the whole value of the corporate shares,⁵ have been held to be, not taxes on property, but franchise taxes, and therefore a corporation so taxed was not entitled to a deduction in respect to such part of the capital stock as was invested in non-taxable securities.⁶ And in the same state a tax on insurance companies measured by the value of policies in force is held to be a franchise tax.⁷ In Connecticut a tax on a corporation measured by its cash capital has been held a franchise tax;⁸ but in a later case a tax measured by the market value of the capital

in *Nichols v. New Haven, etc. Co.*, 42 Conn. 103.

¹ *Jones v. Savings Bank*, 66 Me. 242.

² *State v. Bradford Savings Bank*, 71 Vt. 234. This case holds that the right to impose upon every bank doing business in the state a franchise tax upon the average amount of deposits is measured in point of time by the exercise on the part of the corporation of the rights and privileges essential to the operation of its business; a bank is not "doing business" while a receiver is winding up its affairs.

³ *Bartlett v. Carter*, 59 N. H. 105.

⁴ *Commonwealth v. Lowell Gas Co.*, 12 Allen 75; *Commonwealth v. Hamilton Manuf. Co.*, 12 Allen 298; *Hamilton Manuf. Co. v. Massachusetts*, 6 Wall. 632; *Commonwealth v. Cary Imp. Co.*, 98 Mass. 19.

⁵ *Manuf. Ins. Co. v. Lord*, 99 Mass. 146.

⁶ See cases in last two notes. Also *Coite v. Society*, 32 Conn. 173; *Society v. Coite*, 6 Wall. 594; *Monroe Bank v. Rochester*, 37 N. Y. 365. See *Westminster v. Westminster Savings Bank*, 92 Md. 62. A tax assessed against an electric light company doing business in New York under patents controlled by it is not a property tax assessed

on the patents but a tax on the corporation's franchise or business: *People v. Wemple*, 63 Hun 444. A state has a right to impose by law a franchise-tax on the basis of capital stock, even though the company's property is invested in property which by the federal laws the state cannot tax: *Home Ins. Co. v. New York*, 134 U. S. 594; *Marsden Co. v. State Board*, 61 N. J. L. 461. In *Bank of Commerce v. New York*, 2 Black 620, it was held that while a tax on a bank's nominal capital, without regard to the nature or value of the property composing it, was a franchise-tax, a tax measured by the value of the capital was a tax on property, and any part of the capital invested in non-taxable securities must be deducted from the valuation. This was followed in *Bank Tax Cases*, 2 Wall. 200. See *Wilmington, etc. R. Co. v. Reid*, 13 Wall. 264; *Gulf & S. I. R. Co. v. Hewes (U. S.)*, 22 Sup. Ct. Rep. 26; and compare *Delaware R. Tax*, 18 Wall. 206.

⁷ *Connecticut Mut. L. Ins. Co. v. Commonwealth*, 133 Mass. 161.

⁸ *Coite v. Connecticut Mut. L. Ins. Co.*, 36 Conn. 513. See *Bank of Commerce v. New York*, 2 Black 620; *Belo v. Forsyth County*, 82 N. C. 415.

stock and by the funded and floating indebtedness was adjudged a property tax, and the earlier cases were questioned.¹ In Georgia a state tax on the stock of a building and loan association was held a tax against the stockholder's property, and not on the franchise of the association.² In Pennsylvania the following have been held to be franchise taxes: a tax on a mining company measured by the product mined;³ a tax on the net earnings; and the tax will not be affected by the fact that a part of the earnings was derived from non-taxable securities;⁴ a tax on the capital stock as such,⁵ and a tax measured by dividends.⁶ In Maryland a tax on gross receipts has been held to be not a tax on property but on the franchise.⁷ A tax on

¹ *Nichols v. New Haven, etc. Co.*, 43 Conn. 103.

² *Georgia State B. & L. Assoc. v. Savannah*, 109 Ga. 63.

³ *Kittanning Coal Co. v. Commonwealth*, 79 Pa. St. 100.

⁴ *Philadelphia Contributorship v. Commonwealth*, 98 Pa. St. 48.

⁵ *Carbon Iron Co. v. Carbon County*, 39 Pa. St. 251. And see *Farmers' Bank v. Commonwealth*, 6 Bush 127. A tax on the capital stock irrespective of value was held to be a privilege-tax and valid, though the whole capital was invested in non-taxable securities: *Holly Springs Co. v. Marshall County*, 52 Miss. 281. Real estate owned by a bank constitutes part of its assets within the meaning of a statute providing that banks shall pay a privilege-tax, whose amount varies with their "capital stock or assets," in lieu of all other taxes: *Vicksburg Bank v. Worrell*, 67 Miss. 47. A franchise-tax on corporations cannot be ascertained by using capital stock authorized as a basis for calculation; the amount issued and outstanding is such basis: *People's Inv. Co. v. State Board* (N. J.), 48 Atl. Rep. 579. The New York statute imposing a franchise-tax on corporations recognizes the distinction between share stock and capital stock; capital stock on its par value

being equivalent to share stock, and appraised capital to capital stock: *People v. Roberts*, 155 N. Y. 1. Goodwill of a foreign corporation may, though intangible, be considered as one of the items of the capital employed by it in the state, on which the New York statute of 1896 provides its privilege-tax shall be based: *People v. Roberts*, 159 N. Y. 70. Under a statute providing that a foreign corporation shall be taxed on its "franchise or business" on the basis of "the amount of capital stock employed within the state," such corporation is not taxable to a greater extent than the par value of the capital stock authorized by its charter: *People v. Roberts*, 4 App. Div. (N. Y.) 288, 39 N. Y. Supp. 448.

⁶ *Phoenix Iron Co. v. Commonwealth*, 59 Pa. St. 104. In this case it was held that a company paying such a tax and none specifically on dividends was liable under the general law of the state to a tax on earnings.

⁷ *State v. Philadelphia, etc. R. Co.*, 45 Md. 361; *Cumberland & Pa. R. Co. v. State*, 92 Md. 668. A tax measured by gross receipts cannot be imposed where the corporate franchises and property are exempt from taxation: *State v. Baltimore, etc. R. Co.*, 48 Md. 49. The franchise-tax imposed in

the gross receipts of express companies was held in Georgia to be an occupation, not a property tax,¹ while the Ohio tax upon an express company's tangible and intangible property has been declared not to be a "privilege tax."² In Maine it has been ruled that a tax on railroads laid on an estimate of the roadways, rolling-stock, and franchises, leaving the buildings and local fixtures to be taxed by the municipalities where situated, is not a tax upon property but upon franchises.³

As the right of corporate existence is in its nature indivisible, a license fee therefor must necessarily be an entirety, no matter where the company's property is situated, or how its capital is invested or employed.⁴ The legislature may give authority to a town or city to levy a tax upon corporate franchises;⁵ and an excise-tax may be imposed upon foreign cor-

Maryland upon guaranty companies was held limited to the gross receipts on their business within the state: *State v. United States Fidelity, etc. Co.* (Md.), 48 Atl. Rep. 918.

¹ *Atlanta Nat. B. & L. Assoc. v. Stewart*, 109 Ga. 80.

² *American Express Co. v. Ohio State Auditor*, 166 U. S. 185.

³ *State v. Maine Cent. R. Co.*, 74 Me. 376. In Iowa a tax on railroad companies of one per cent on gross earnings, one-half to be paid to the state and the other half apportioned among the municipalities, was sustained in *Dubuque v. Chicago, etc. R. Co.*, 47 Iowa 196, and was held applicable to unincorporated owners of roads. A statute declaring that certain corporations, among them "railroad companies not paying an *ad valorem* tax," shall each pay a certain amount per year, according to the mileage operated or controlled, declares the business of the class of railroads designated to be a privilege, and imposes a tax thereon, and does not attempt to declare to be a privilege, and to tax as such, the condition of "not paying an *ad valorem* tax:" *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684.

⁴ *Lumberville, etc. Co. v. State Board*, 55 N. J. L. 529. The Tennessee statute providing for the taxation of sleeping-cars is confined to one privilege-tax for the state, and does not impose a privilege-tax for counties upon sleeping-cars run wholly within the state: *Gibson County v. Pullman Southern Car Co.*, 42 Fed. Rep. 572.

⁵ *South Covington & C. St. R. Co. v. Bellevue* (Ky.), 49 S. W. Rep. 23. In Maine legislation has not authorized the municipal assessors to impose a tax upon a corporation by reason of its franchise: *Wheeler v. County Com'rs*, 88 Me. 174. Under a statute providing that a city may permit the construction of a street railway upon such conditions as it deems best for the public interest, the city may require a street-railway company to pay an annual tax for each mile of its track as a condition to its right to construct and operate its line: *Chicago General R. Co. v. Chicago*, 176 Ill. 253. As to municipal taxation of the franchises of railroad companies, see *Huck v. Chicago, etc. R. Co.*, 86 Ill. 352; *San Jose v. San Jose, etc. R. Co.*, 53 Cal. 476.

porations doing business in the state.¹ But a tax on foreign corporations, however measured, cannot, as to one not actually doing business within the state, be a franchise-tax.² A domestic corporation, on the other hand, is in respect of its business taxable by the state which created it, although it does not do business there.³ Sometimes, however, domestic corporations are taxed for so much only of their capital as is "employed within" the state.⁴

Dividends. An excise-tax is sometimes measured by dividends, and when that is the case, anything divided as profit, and actually passed to the stockholders, is to be deemed dividend, whether actually declared or not.⁵ And if a dividend

¹ *Ante*, p. 95; *Ducat v. Chicago*, 48 Ill. 172, 10 Wall. 410; *Attorney-General v. Bay State Mining Co.*, 99 Mass. 148; *Connecticut Mut. L. Ins. Co. v. Commonwealth*, 133 Mass. 161; *People v. Horn Silver Mining Co.*, 105 N. Y. 76.

² *Commonwealth v. Standard Oil Co.*, 101 Pa. St. 119. See *Pipe-Line Co. v. Berry*, 52 N. J. L. 308. In *People v. Coleman*, 135 N. Y. 231, it is said that a statute providing for the taxation of the "privileges and franchises" of savings banks manifestly has no application to foreign savings banks. "As to corporations organized under the laws of this state, the legislative power to tax their business and franchises is general; but as to foreign corporations, the jurisdiction is gained from the business which they do in this state, and the tax is upon that business." *People v. Weaver*, 129 N. Y. 558.

³ *People v. Weaver*, 129 N. Y. 558.

⁴ Under a statute taxing domestic corporations for so much of their capital as is "employed within this state," the capital of such a corporation to the extent of stock held by it in other home corporations is a basis of taxation in the state: *People v. Campbell*, 138 N. Y. 543. Otherwise as to stock held by it in foreign corporations: *Ibid.*; *People v. Camp-*

bell, 148 N. Y. 690. But bonds of foreign corporations held by it are a basis of taxation: *People v. Campbell*, 138 N. Y. 543. The capital stock of a railroad company invested in cars permanently out of the state is not subject to the franchise-tax: *People v. Campbell*, 88 Hun 544, 138 N. Y. 543. The amount of capital employed by any corporation within the state is a question of fact for the comptroller: *People v. Campbell*, 70 Hun 507. And his determination as to such amount will not be disturbed unless clearly shown to be erroneous: *People v. Weaver*, 129 N. Y. 558.

⁵ *Commonwealth v. Pittsburgh, etc. R. Co.*, 74 Pa. St. 83; *Commonwealth v. Western Land & Imp. Co.*, 156 Pa. St. 455. The earnings or profits of a gas company, fairly devoted to the betterment of its plant, cannot be considered as "dividends earned or declared": *State v. Comptroller*, 54 N. J. L. 135. Where a bridge owned by an unincorporated bridge company was declared a county bridge, and the damages awarded, which were in excess of the capital stock, were divided among the shareholders proportionately, such excess represented a profit which the company made in its business, and, as

is declared, the tax is payable upon it, whether earned or not.¹ It is immaterial as regards the tax whether the dividend is paid in money or in certificates which go to increase the stock of the several shareholders,² though a mere arithmetical increase in shares without passing anything out of the corporate treasury or property is no dividend.³ A franchise-tax measured by dividends may be imposed, though the corporation is at the same time taxable on net earnings.⁴ Where the tax is to be measured by dividends made above a certain percentage of the capital, this will be taken to mean the capital actually paid in, and not the authorized capital.⁵ Surplus accumulations made before the law for taxing dividends took effect, though dividends afterwards, will not be held to be such dividends as the law intended.⁶ When a tax is measured by divi-

such, was taxable: *Matson's Ford Bridge Co. v. Commonwealth*, 117 Pa. St. 265.

¹ *Commonwealth v. Pittsburgh, etc. R. Co.*, 74 Pa. St. 83; *Columbia, etc. Co. v. Commonwealth*, 90 Pa. St. 307. Bank's act in declaring dividend and making sworn return of taxes due thereon was conclusive as to liability, and bank could not avoid paying tax by showing that because of an undiscovered embezzlement by cashier there were no "earnings, income, or gains" for the year, and that dividends were in fact ignorantly paid out of capital and accumulated surplus of former years: *Central Nat. Bank v. United States*, 137 U. S. 355.

² *State v. Farmers' Bank*, 11 Ohio 94; *Commonwealth v. Cleveland, etc. R. Co.*, 29 Pa. St. 370; *Lehigh Crane Iron Co. v. Commonwealth*, 55 Pa. St. 448. See *Bailey v. Railroad Co.*, 22 Wall. 604; *Lake Shore, etc. R. Co. v. People*, 46 Mich. 193.

³ *Commonwealth v. Pittsburgh, etc. R. Co.*, 74 Pa. St. 83. A *bona fide* reduction of capital stock, effected by issuing certificates at \$38 a share in lieu of the original certificates of \$50 and paying the stockholders \$12 per share, was not a dividend: *Com-*

monwealth v. Central. Transp. Co., 145 Pa. St. 89.

⁴ *Phoenix Iron Co. v. Commonwealth*, 59 Pa. St. 104.

⁵ *Second, etc. R. Co. v. Philadelphia*, 51 Pa. St. 465; *Philadelphia v. Ferry Pass. R. Co.*, 52 Pa. St. 177; *Philadelphia v. Ridge Av. R. Co.*, 102 Pa. St. 190.

⁶ *People v. Albany Ins. Co.*, 92 N. Y. 458. See, also, *Chicago, etc. R. Co. v. Page*, 1 Biss. 461. A dividend will be regarded as *prima facie* evidence that the same was earned during the year in which it was declared, the burden being on the corporation to show that the dividend was made out of the accumulated earnings of previous years: *Commonwealth v. Brush Electric Light Co.*, 145 Pa. St. 147. The amount of a dividend declared by a corporation before the date fixed for the assessment of property for taxation but payable at a future date, does not constitute a part of the corporation's surplus funds which are taxable under the statute, but is a debt which the corporation is entitled to have deducted from its taxable assets: *People v. Barker*, 86 Hun 131. When taxation is by property value, dividends, until

dends the corporation cannot deduct a sum which its members have contributed to make up a loss.¹ If the tax is measured by dividends exceeding a specified percentage, this will be held to mean the aggregate dividends for the year, and the corporation cannot, by declaring several, each of which is below the percentage named, escape the tax.² A corporation otherwise subject to a tax upon the basis of its dividends is not exempt therefrom by the fact that the dividends are earned outside the state, and that its business within the state is without profit.³ It has been held that a federal tax imposed upon all dividends declared to stockholders "as part of the earnings, income, or gain of any bank" was assessable against the bank for the whole amount of dividends so declared, although the bank had paid a sum to the state under a state law imposing a tax against the stockholders upon the value of their shares, and requiring the bank to retain the amount thereof from the dividends due them until it was made to appear that their tax was paid.⁴ Other points of less importance relating to the taxation of dividends are considered in the cases cited in the margin.⁵

actually paid over, are taxable to the corporation, but after being paid over are taxable as property of the payees: *Board of Revenue v. Gas Light Co.*, 64 Ala. 269. A tax paid by a railroad company on its undistributed surplus is a tax upon its own property, and cannot be regarded as a payment of a tax upon a stock dividend thereafter declared by the company; so a county which owned stock could not claim recovery on the ground that it was exempt from taxation on stock held by it: *Logan County v. United States*, 169 U. S. 255.

¹ *Columbia Conduit Co. v. Commonwealth*, 90 Pa. St. 307. Dividends as a means of arriving at the value of the franchise: *New Orleans & C. R. Co. v. New Orleans*, 44 La. An. 1053; *People v. Albany Ins. Co.*, 92 N. Y. 458; *People v. Barker*, 144 N. Y. 94. Dividends are not proof of the earning power of the corporate property, but are competent evidence on that

question: *People v. Barker*, 81 Hun 22.

² *Philadelphia v. Ridge Av. R. Co.*, 102 Pa. St. 190. The average capital employed for the preceding year, not the highest sum employed at any one time, is to be taken as a basis for ascertaining, for taxing purposes, the rate of dividends: *People v. Morgan*, 57 App. Div. (N. Y.) 335. As to ascertaining the percentage of capital to which dividends for the year amount, see *People v. Delaware & H. Canal Co.*, 54 Hun 598; *Commonwealth v. Brush Electric Light Co.*, 145 Pa. St. 147.

³ *People v. Roberts*, 155 N. Y. 408.

⁴ *Central Nat. Bank v. United States*, 137 U. S. 355.

⁵ *Haight v. Railroad Co.*, 6 Wall. 15; *Railroad Co. v. Jackson*, 7 Wall. 262; *United States v. Railroad Co.*, 17 Wall. 322; *United States v. Central Bank*, 15 Fed. Rep. 222; *Commissioners v. Buckner*, 48 Fed. Rep. 533. Where a corporation is exempt from

Income. Where the tax is to be measured by income, this must be understood as gross income, and it will be chargeable even though there be no profits.¹ If a railroad company which

taxation, the stockholders are not taxable in respect of dividends received from it: *State v. City Council*, 5 Rich. 561. If a corporation issues scrip to its members which represent funds in its hands, to be paid at some future day to the members, but which in the meantime is contingently liable for demands, the corporation should be taxed in respect of this fund: *People v. Tax Com'rs*, 31 Hun 261, citing *People v. Assessors*, 76 N. Y. 202.

¹*People v. Supervisors*, 18 Wend. 605. See *Waring v. Savannah*, 60 Ga. 93, and compare *Matter of Western Railway*, 5 Met. 596; *Commonwealth v. Ocean Oil Co.*, 59 Pa. St. 61. And see *ante*, p. 390. Park tax on gross receipts of street railway companies held not to apply to electric railroads originally constructed outside the city on a private right of way: *Mayor, etc. v. Baltimore, etc. R. Co.*, 84 Md. 1. A statute providing for the taxation of railroad companies by requiring them to pay a percentage of their gross earnings does not apply to street railroads: *State v. Duluth Gas, etc. Co.*, 76 Minn. 96. To what railroads such tax applies: *State v. Northern Pac. R. Co.*, 36 Minn. 207; *State v. District Court*, 54 Minn. 34. Company failing to pay percentage tax became subject to assessment on its lands in the various counties, and an assessment accordingly made before the repeal of the percentage law was not invalidated by such repeal: *Northern Pac. R. Co. v. Clark*, 153 U. S. 252. Union depot company held not liable to pay, as taxes, a percentage on its receipts or gross earnings, since payment of such percentage by the railway companies which own all the stock and use

the terminal facilities of the depot company constitutes payment of taxes on all the property of the latter: *State v. St. Paul Union Depot Co.*, 42 Minn. 142. Ascertaining rate of percentage payment: *State v. Northern Pac. R. Co.*, 36 Minn. 207. Where, for fixing the license-tax, railroads are divided into classes according to the gross earnings "per mile per annum of operated road," the class is fixed by the amount of earnings within the year, whether time of operation was less than the year or not: *State v. McFetridge*, 64 Wis. 130. Rental paid for a leased road is not to be deducted from the gross earnings; but the amount received for the use of leased cars in excess of the amount paid for the use of cars of other companies is a part of the gross earnings: *Ibid.* Money received by one railroad company from another for the use of its tracks is a toll within the meaning of a statute imposing a certain tax on the gross receipts of a railroad company "for tolls and transportation:" *Commonwealth v. New York, P. & O. R. Co.*, 145 Pa. St. 38; but tolls received by one railroad company from another for the joint use of the former's track, computed at a certain specified sum per ton or per passenger, are not within a statute providing that a railroad company owning, operating, or leasing any railroad shall pay a tax upon the gross receipts "received from passengers and freight:" *Commonwealth v. New York, L. E. & W. R. Co.*, 145 Pa. St. 200. Construction of provision for gross-earnings tax upon property of certain companies: *State v. Northwestern Tel. Exch. Co. (Minn.)*, 87 N. W. Rep. 1131. Under a statute

is taxable on gross income leases its road to another, receiving nothing but rent, it is nevertheless liable on the net income of the road.¹ Income, when not qualified in a tax-law, may be held to mean that which comes in or is received from any service, business, or investment of capital, without reference to outgoing expenditures; and it thus differs from net income, net earnings, or profits, which mean the gain with both receipts and expenditures taken into the account.²

In the case of such a tax no deduction is to be made in respect of any part of the income derived from non-taxable securities.³ When a tax is measured by profits, the issue of certificates to the shareholders certifying that they respectively have an increased interest in the corporation to an amount

providing that certain railroads shall pay as a privilege-tax an annual license fee equal to a certain percentage on the gross earnings within the state, but that such gross earnings shall not include earnings derived from business of an interstate character, a railroad company is not liable to an assessment on gross earnings derived from carrying United States mails when such earnings include moneys received from carrying interstate and foreign mails, and it is impossible to determine the proportion of mail which originates and terminates within the state: *People v. Morgan*, 168 N. Y. 1. Assessment held void as not showing gross receipts or percentage tax thereon: *State v. Sloss*, 87 Ala. 119.

¹ *Goldsmith v. Railroad Co.*, 62 Ga. 468; *Wright v. Railroad Co.*, 64 Ga. 783, 794. Under the gross-earnings law the purchase of a railroad subject to the one per cent tax by a railroad subject to the three per cent tax does not operate as a merger, or entitle the state to take into consideration the earnings of the former in estimating the gross earnings of the latter: *Minneapolis & St. L. R. Co. v. Koerner* (Minn.), 88 N. W. Rep. 430. See *Vermont & C. R. Co. v. Vermont Cent. R. Co.*, 63 Vt. 1.

² See *New Orleans v. Hart*, 14 La. An. 803; *New Orleans v. Hassman*, 14 La. An. 865; *State v. Board of Assessors*, 48 La. An. 1156; *Opinions of Justices*, 5 Met. 596; *Detroit, G. R. & W. R. Co. v. Railroad Com'r.*, 119 Mich. 132; *State v. Virginia & T. R. Co.*, 23 Nev. 283, 24 Nev. 53; *State v. Manchester & L. R. (N. H.)*, 48 Atl. Rep. 1103; *People v. Supervisors*, 4 Hill 20; *People v. Supervisors*, 18 Wend. 605; *Commonwealth v. Ocean Oil Co.*, 59 Pa. St. 61; *Commonwealth v. Penn Gas Coal Co.*, 62 Pa. St. 241; *Matson's Ford Bridge Co. v. Commonwealth*, 117 Pa. St. 265; *Commonwealth v. Philadelphia & E. R. Co.*, 164 Pa. St. 252. An enterprise in which corporate stockholders as such engage, making large profits, but in which they are personally liable, is not to be considered the corporation's enterprise, and the corporation is not taxable in respect of such profits: *Credit Mobilier v. Commonwealth*, 67 Pa. St. 233. As to meaning of income and profits see *ante*, pp. 390, 391.

³ *Philadelphia Contributorship v. Commonwealth*, 98 Pa. St. 48. For a case in which income was held not taxable because shares were taxable, see *Boston Water Power Co. v. Boston*, 9 Met. 199.

specified is evidence that such profits have been made.¹ If a mine's net product is to be assessed for one year, the amount of the assessment cannot be ascertained by taking the net product for the year before.²

Taxing franchises as property. In some states all taxation as far as possible is brought to an *ad valorem* standard. Franchises are property,³ and in such states may be taxed by a valuation, being estimated for the purpose either separately or as a part of the aggregate corporate property.⁴

¹ *People v. Assessors*, 16 Hun 196, 76 N. Y. 202. As to surplus earnings, see *People v. Tax Com'rs*, 76 N. Y. 64; *People v. Barker*, 144 N. Y. 94, 146 N. Y. 308. The federal statute providing for a tax on all undivided profits of railroad corporations "which have accrued and been earned and added to any surplus, contingent or other fund," does not authorize a tax on profits not divided but used in construction: *Marquette, H. & O. R. Co. v. United States*, 123 U. S. 722. A loss on securities bought years before cannot be used to diminish a tax measured by annual earnings: *Philadelphia Contributorship v. Commonwealth*, 98 Pa. St. 48.

² *Mercur, etc. Co. v. Spry*, 16 Utah 222.

³ *Society v. Coite*, 6 Wall. 594; *State Railroad-Tax Cases*, 92 U. S. 575; *San Jose Gas Co. v. January*, 57 Cal. 614; *Ottawa Glass Co. v. McCaleb*, 81 Ill. 556; *State Board v. Central R. Co.*, 48 N. J. L. 146, 283; *Worth v. Petersburgh, etc. R. Co.*, 89 N. C. 301; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406; *Commercial Electric L. & P. Co. v. Judson*, 21 Wash. 49; *Edison Electric Illum. Co. v. Spokane County*, 22 Wash. 168; *State v. Anderson*, 90 Wis. 550. A state which has chartered a bridge company to build a bridge over a river forming a boundary of the state may properly include the franchise thus granted in

the valuation of the company's property for taxation: *Henderson Bridge Co. v. Kentucky*, 166 U. S. 150. Intangible property, such as franchises, adding to the value of street railroads, is taxable in Michigan: *Detroit Citizens' St. R. Co. v. Common Council*, 125 Mich. 673. There it is to be treated as personalty, assessable in the municipality where the track or road is located, used, or laid: *Detroit v. Wayne Circuit Judge* (Mich.), 86 N. W. Rep. 1032. An electric street railway company's franchises are taxable with the property necessary for their exercise in the assessment district in which the company's principal office is located: *State v. Anderson*, 90 Wis. 550. Franchise not real estate under statute enumerating what shall be regarded as real estate for purpose of taxation, but not including franchises in such enumeration; therefore corporation's franchise is not to be included in deduction of value of real estate: *People v. Tax Com'rs*, 104 N. Y. 240. Franchises of corporations held not taxable under New Jersey statutes enumerating realty and personalty, but excluding franchises from the enumeration: *Passaic Water Co. v. Paterson*, 56 N. J. L. 471.

⁴ *Pacific Hotel v. Leib*, 83 Ill. 602; *Union Ins. Co. v. Weber*, 96 Ill. 346; *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406; *State v. Anderson*, 90 Wis. 550. An assessment of the cor-

Taxing by value. It has been shown in preceding pages that in whatever form the corporation is taxed, it is competent also to tax the shares of the corporators, though this, in effect, may be double taxation.¹ This statement must be taken with the implied exception that the shares of non-resident shareholders are not taxable,² unless their taxability at the corporate place of business is annexed as an incident to the corporate privilege,³ in which case they may not only be taxed, but the

porate franchise of a street-car company, together with its easement in the streets, at a gross sum, is not objectionable as being a separate and independent assessment upon the franchise: *South Nashville St. R. Co. v. Morrow*, 3 Pickle 406. Street-railway company's franchise and track or road assessable together for taxation: *Detroit v. Wayne* Circuit Judge (Mich.), 86 N. W. Rep. 1032. Statute of Minnesota for listing and assessing franchises for taxation considered: *State v. Duluth Gas, etc. Co.*, 76 Minn. 96. The Kentucky statutory provision for taxing the "franchises" of corporations, etc., is to be construed not as a tax upon the franchise in the technical sense, but upon all the intangible property of the corporation: *Adams Express Co. v. Kentucky*, 166 U. S. 171. Under the New York franchise-tax law goodwill is taxable with the franchise as forming part of the value of the share-stock: *People v. Roberts*, 154 N. Y. 101, 159 N. Y. 70. But goodwill, as such, is not taxable for general town, county, or municipal purposes: *People v. Dederick*, 161 N. Y. 195. In California the market value of the shares of stock, with the value of corporate realty and personalty deducted, is deemed the value of the franchise: *Spring Valley Water Works v. Schotter*, 62 Cal. 69. Similar rule in Kentucky: *Henderson Bridge Co. v. Commonwealth*, 99 Ky. 623; *Louisville R. Co. v. Commonwealth* (Ky.), 49 S. W. Rep. 486.

The question as to how far the value of a corporation's franchise is affected by the fact that it is to exist only for a limited time is for the board of valuation and assessment, and its finding as to that matter is conclusive: *Ibid.* Determining value of franchise from earning capacity, etc.: *New Orleans C. & L. R. Co. v. New Orleans*, 44 La. An. 1055; *Crescent City R. Co. v. New Orleans*, 44 La. An. 1057; *Crescent City R. Co. v. Board of Assessors*, 51 La. An. 335; *St. Charles St. R. Co. v. Board of Assessors*, 51 La. An. 459. Form of assessment of taxes on railroad franchise held invalid: *State v. Austin & N. W. R. Co.* (Tex.), 62 S. W. Rep. 1050.

¹ *Ante*, pp. 389, 390, 403, 404.

² *Ante*, pp. 86, 87. In Rhode Island non-residents are not to be called upon to pay taxes upon personal property because of their ownership of corporate stock, other than upon the specific personalty mentioned in the statute; and therefore a tax upon a mortgage owned by a corporation is not collectible when it would compel non-resident stockholders to pay proportionately: *Newport Reading Room, etc., Petitioners*, 21 R. I. 440. The fact that some of the stockholders are non-residents will not exempt a corporation from paying an excise tax, even though it be measured by the market value of its stock: *Commonwealth v. Hamilton Manuf. Co.*, 12 Allen 298.

³ *Ante*, pp. 92, 93.

payment of the tax enforced through the corporation by requiring it to withhold the amount from dividends.¹ Under a statute requiring the whole amount of a company's shares to be taxed, they need not be taxed at their par value when it is less than the true value.²

When the purpose of the law is to tax the corporation on the value of its property, this may be done either by assessing the actual capital stock as being presumptively the actual measure of its property,³ or by assessing the property specifically on

¹ *Minot v. Philadelphia, etc. R. Co.*, 18 Wall. 206. See *Railroad Tax Cases*, 92 U. S. 595. And see *post*, ch. XIV.

² *Fidelity Trust Co. v. Vogt* (N. J.), 48 Atl. Rep. 580.

³ The word "stock," in a statute authorizing the taxation of stock in corporations, means not only the stock subscriptions, but the actual tangible property of the corporation: *State v. Hamilton*, 5 Ind. 310; *Auditor v. New Albany & S. R.*, 11 Ind. 570; *Michigan Central R. Co. v. Porter*, 17 Ind. 380; *State v. Branin*, 23 N. J. L. 484; *Whitesell v. Northampton County*, 49 Pa. St. 526; *McKeen v. Northampton County*, 49 Pa. St. 519. A tax on the stock of a corporation is a tax on its property and assets, including franchises: *Commonwealth v. New York, P. & O. R. Co.*, 188 Pa. St. 169; *Commonwealth v. Beech Creek R. Co.*, 188 Pa. St. 203. The term "capital stock" in a taxing law held to include the entire property, real and personal, tangible and intangible, as well as the value of the franchise: *Henderson Bridge Co. v. Commonwealth*, 99 Ky. 623. When the capital stock of a corporation is required to be assessed at its "actual value," this means above or below the par value, according to the fact: *Oswego Starch Factory v. Dolloway*, 21 N. Y. 499. Only when the value of the capital stock is unknown to the assessors may they consider the value of the shares as indicative of that of the capital; and where the

amount and value of the capital are disclosed, and the assessors have no reason to disbelieve the statement, they cannot assess the capital stock at a valuation derived from the market value of the shares: *People v. Coleman*, 126 N. Y. 433. In determining the capital, the true value of the corporate assets, less the debts, and not the market value of the shares, is to be considered: *People v. Wemple*, 138 N. Y. 582. To the same effect, *People v. Barker*, 146 N. Y. 304. But for the valuation under a statute requiring the capital stock to be appraised at its actual cash value, "not less, however, than at the average price at which said stock sold for during said year," see *People v. Roberts*, 90 Hun 537, 36 N. Y. Supp. 34; *People v. Roberts*, 4 App. Div. (N. Y.) 334, 38 N. Y. Supp. 724; *Commonwealth v. Philadelphia & R. R. Co.*, 145 Pa. St. 74. In Ohio it is held that the selling value of the capital stock of a corporation may be considered by the assessors in valuing the corporate property within the state: *State v. Jones*, 51 Ohio St. 492. In Pennsylvania it is said that in appraising for taxation a corporation's capital stock, the average selling price of the shares of stock during the tax year should be taken as the basis, and not the average amount paid in by the stockholders on their stock during the year: *Commonwealth v. People's Traction Co.*, 183 Pa. St. 405. How such selling price

an estimate of value.¹ If the property is to be listed and taxed as in the case of natural persons, what is said elsewhere on

ascertained, and how stock should be appraised where there have been no sales of shares and there is no evidence of their value: *Ibid.* Effect of allotment of additional stock to shareholders: *Ibid.* When the value of the stock is par it is of no importance that the tangible property in which the capital is invested is worth less than cost: *St. Charles St. R. Co. v. Assessors*, 31 La. An. 852. See *Nichols v. New Haven, etc. Co.*, 42 Conn. 103. In Louisiana the taxable value of that part of the capital of a corporation represented by shares is, for assessment purposes, held to be the total par value of the shares when they are above par: *New Orleans, etc. Co. v. Assessors*, 32 La. An. 19. See *New Orleans Gas-Light Co. v. Assessors*, 31 La. An. 475; *Louisiana Oil Co. v. Assessors*, 34 La. An. 618. Stock of cotton exchange held taxable under statute providing for taxation of all shares of stock and everything "possessing any money value:" *Schreiber v. Assessors*, 37 La. An. 908. A corporation holding certificates of stock in another corporation is not taxable therefor, since the property represented by such certificates is taxable against the corporation issuing them: *People v. Board of Assessors*, 30 N. Y. Supp. 448. Under the New Mexico statute corporate stock is held taxable whether pledged or not, and assessable at its cash value in the name of the corporation: *Territory v. Co-operative B. & L. Assoc. (N. M.)*, 52 Pac. Rep. 1097. Unissued shares held non-assessable: *Consumers' Ice Co. v. State*, 82 Md. 132; *Boston & A. R. Co. v. Commonwealth*, 157 Mass. 68. Entire stock subscribed for held to be "issued and outstanding" for purposes of taxation: *American Pig-iron Storage Co. v. State Board*, 56 N. J. L. 389. Cor-

poration held taxable on its entire capital stock though only part paid in: *Shelby County Trust Co. v. Board of Trustees*, 91 Ky. 578. No part of the capital stock of a corporation the property of which is listed for taxation is taxable where the value of the real or personal property exceeds the value of the capital stock: *State v. St. Paul Trust Co.*, 76 Minn. 423. The Indiana statute providing that where the tangible property of a corporation is listed and assessed, the shares of its capital stock shall not be listed or assessed, is only intended to prevent double taxation, and does not prohibit the assessment of the excess of the capital stock of a corporation over the amount of its tangible property as shown by its verified schedule: *Hyland v. Coal Co.*, 129 Ind. 68. A statutory provision that the capital stock of private corporations, etc., shall be taxable, except so much as may be invested in property otherwise taxed, was only intended to prevent double taxation of taxable property, and does not render taxable such part of the capital stock of an insurance company as is invested in non-taxable bonds: *State v. Stonewall Ins. Co.*, 89 Ala. 335. Since one sum of money cannot serve as capital for two companies, and the capital of domestic corporations must be certified to the state, a domestic insurance company is estopped from asserting that part of its capital stock is not taxable because invested in property otherwise taxed, viz., in the capital stock of a state bank: *Commercial F. Ins. Co. v. Board of Revenue*, 99 Ala. 1. Where capital is exempt, money in the corporate treasury cannot be assessed: *Fall River v. County Com'rs*, 125 Mass. 567.

¹ In determining the taxable value

those subjects will not need repetition here. It was held in a recent New York case that the actual value of a corporation's capital stock is to be ascertained for taxation by taking the value of its assets, deducting its liabilities and exemptions, and adding the value of the good-will of its business, including its right to conduct the same under its franchise.¹ In another case it is said that "neither the par value

of the property of a corporation, it will be presumed, when the contrary is not shown by its return, that all of its property is used in the transaction of its business: *Adams Express Co. v. Ohio State Auditor*, 166 U. S. 185. As the earning capacity of real estate owned by individuals may be considered in fixing its value for taxation, so the selling value of a corporation's capital stock may be considered by the assessors in valuing the corporate property within the state: *State v. Jones*, 51 Ohio St. 492. In taxing a bank's property with property in general, losses and gains cannot be disregarded: *City Bank v. Bogel*, 51 Tex. 355. A corporation organized for the planting of hedges was held taxable not upon its capital stock, but upon the true value of its real and personal estate; and contracts held by it to pay for hedges planted, the money to become due in future instalments, and the company meanwhile to maintain hedges, were taxable for their true value, computed as of the day when taxes were assessable: *State v. Craig*, 51 N. J. L. 437.

¹ *People v. Roberts*, 154 N. Y. 101. Held proper to take into consideration the franchises owned by the corporation: *Commonwealth v. Delaware, S. & S. R. Co.*, 165 Pa. St. 44. The cash value of a corporation's stock and franchise may be ascertained by taking the fair cash value of the stock subscribed and paid for, adding to this the fair cash value of the corporate indebtedness, except

for current expenses, and from this deducting the equalized value of the tangible property. This is not a taxation of the debts: *Ottawa Glass Co. v. McCaleb*, 81 Ill. 566. Bank shares are worth for taxing purposes what their market value is at the time of assessment, and not what their value may be on the consummation of a contemplated closing of the bank's business, and division made among the stockholders: *Bank of Commerce v. New Bedford*, 155 Mass. 313. To the same effect, see *National Bank v. New Bedford*, 175 Mass. 257. In valuing corporate stock for taxation the present, and not the prospective, value of the stock must be taken: *People v. Roberts*, 4 App. Div. (N. Y.) 334, 38 N. Y. Supp. 724. When corporate shares have been withdrawn from the market, the value of them may be ascertained from other sources; and when they have been exchanged for other securities, the value fixed upon them in the exchange is a proper basis for the assessment: *Planters' Crescent Oil Co. v. Assessor*, 41 La. An. 4137. Where tax commissioners, in valuing capital stock, acted solely on the statement made by the corporation as to its assets, and did not impugn any facts stated therein, an assessment based upon a valuation greater than that so claimed will be set aside if there is nothing from which the court can find that the assets were in fact greater: *People v. Barker*, 144 N. Y. 638. See *People v. Barker*, 91 Hun 642; *People v. Feitner*, 41

nor the stock-market quotations of the stock and bonds of a railroad or telephone company furnish a proper basis for the assessment of its property; nor do its gross earnings, leaving out of consideration the operating expenses."¹ Often it is provided that the value of real property, or of realty and personalty, owned by the corporation shall be deducted from the aggregate value of the shares of stock in order to ascertain the taxable value of such shares;² but personalty outside of the

App. Div. (N. Y.) 571. Further as to valuation of corporate stock, see *People v. Barker*, 139 N. Y. 55; *People v. Commissioners*, 51 Hun 312, 641; *People v. Campbell*, 70 Hun 507; *People v. Barker*, 75 Hun 6; *People v. Roberts*, 82 Hun 313, 90 Hun 537, 91 Hun 146.

¹*Railroad & T. Cos. v. Board of Equalizers*, 85 Fed. Rep. 302. Gross earnings may be considered in fixing the value of corporate stock: *Louisville R. Co. v. Commonwealth* (Ky.), 49 S. W. Rep. 486. See *Commonwealth v. Pittsburgh & W. R. Co.*, 166 Pa. St. 453. "The amount and the rate per cent of dividends made, and the amount carried to surplus and sinking fund during the tax year, do not furnish an absolute indication or measure of the actual value in cash of the capital stock of a corporation, but are to be considered, with all other relevant facts, in determining what is its actual value in cash;" large earnings in coal mining may indicate large exhaustion of the coal, and consequent impairment of the capital: *Commonwealth v. Edgerton Coal Co.*, 164 Pa. St. 284. So, the appraisal of shares of a coal-mining corporation at five-sixths of their par value, where the net earnings for the year had been more than sixteen per cent, will not be disturbed merely because its lease of coal lands would soon expire, and might not be renewed: *Commonwealth v. West End Coal Co.*, 182 Pa. St. 353. Where a corporation may, subject only to the

penalty that the trustees shall be personally liable for its debts, declare a dividend though there be no surplus, and where such corporation is not governed by the prohibition against impairment of capital stock, no presumption, as against its sworn statement, arises as to the value of its assets from the fact that it has just declared an eight per cent dividend on the full value of its capital stock: *People v. Barker*, 141 N. Y. 251. Where, in proceedings to review the assessment of an elevated railroad, it appeared that a dividend had been paid on its capital stock, the presumption that such capital was unimpaired may be rebutted by evidence that the company owed mortgages, etc.: *People v. Barker*, 165 N. Y. 305.

²See *Batterson's Appeal*, 72 Conn. 374; *Dennis's Appeal*, 72 Conn. 369; *Wheeler v. County Com'rs*, 88 Me. 174; *People v. Tax Com'rs*, 104 N. Y. 240; *People v. Barker*, 144 N. Y. 94; *Board of Com'rs v. Blackwell Durham Tobacco Co.*, 116 N. C. 441. It is immaterial whether a tax upon the corporation's real estate is paid in money or in any other way; its value must be deducted: *Wheeler v. Board of Com'rs*, 88 Me. 174; *Waite v. Hyde Park Lumber Co.*, 65 Vt. 103. No deduction from value of shares because of reversionary interest in leasehold estates for ninety-nine years renewable forever: *Baltimore v. Canton Co.*, 63 Md. 218. Where part of the capital stock of a domes-

state need not be deducted.¹ Unpaid purchase-money due to a corporation for land situated in another state and sold by the corporation is to be considered in fixing the value for taxation of its capital stock, although the corporation has taken a mortgage on the property to secure the price.² It is also held that a corporation's debts are to be considered in valuing its stock, but are not to be deducted specifically from the assets.³ An investment of a mining company's profits, accumulated by passing dividends, in the stock of a railroad to facilitate working the mines, is not to be considered as capital for the purpose of taxation, since it is derived from a wasting property in which the capital of the company was invested.⁴

tic corporation represents the value of a leasehold interest in a railroad entirely without the state, the amount thereof should be deducted in computing the value of the capital stock as a basis for taxation: *Commonwealth v. Delaware, L. & W. R. Co.*, 145 Pa. St. 96. Actual, and not assessed, value of realty outside of the state to be deducted: *Fairfield Chem. Co. v. Tax Com'rs*, 5 N. Y. Supp. Rep. 87. Assessed valuation of outside realty treated as actual value: *People v. Coleman*, 115 N. Y. 178. In Louisiana corporations are liable to assessment only for excess of market value of their capital stock over and above tangible property otherwise assessed and taxed: *Merchants' Mut. Ins. Co. v. Board of Assessors*, 40 La. An. 371. In estimating net surplus for purpose of valuing shares it is proper not to treat capital stock as a liability: *Batterson's Appeal*, 72 Conn. 374. As to taxation of mortgages held by corporations liable to tax on capital stock, see *Pennsylvania Co. v. Board of Revision*, 139 Pa. St. 612.

¹ *People v. Commissioners*, 51 Hun 312; *Commonwealth v. Pennsylvania Coal Co.*, 197 Pa. St. 551; *Commercial Nat. Bank v. Chambers*, 21 Utah 324.

² *Commonwealth v. Pennsylvania Coal Co.*, 197 Pa. St. 551.

³ *Commonwealth v. New York, P. & O. R. Co.*, 188 Pa. St. 169; *Commonwealth v. Manor Gas-Coal Co.*, 188 Pa. St. 195; *Commonwealth v. Beech Creek Coal Co.*, 188 Pa. St. 203. In New York a corporation's debts are to be deducted in assessing its personalty for town, county, and municipal taxation: *People v. Dederick*, 161 N. Y. 195. In estimating the capital of corporate property for taxation the commissioners are not warranted in presuming that the company's bonded or other indebtedness represents actual property to the amount of such indebtedness, in addition to that represented by its capital stock: *People v. Barker*, 146 N. Y. 304. Refusal to set off indebtedness because of supposititious undisclosed assets, held erroneous: *People v. Feitner*, 41 App. Div. (N. Y.) 471. Where the corporation's debts exceed its capital stock, so as to deprive it of any actual value, it is immaterial that the capital stock assessment was by the board of equalization based on a capital stock in excess of its actual capital stock, but at an amount less than the indebtedness: *Keokuk & H. Bridge Co. v. People*, 161 Ill. 132.

⁴ *People v. Roberts*, 156 N. Y. 585. A tax on the "capital" of a corporation is not void for not setting out

*Railroad companies.*¹ "The property of railroad and canal companies constitutes a legitimate class of property for the purposes of taxation—a class which, in order to treat it fairly in the matter of taxation, must be treated separately."² Indeed the difficulties of assessing, in the same way that property in general is assessed, lines of railroad extending through many municipalities are so great and so obvious that in many states it is not attempted, and a franchise tax is imposed as a substitute for all other taxation. But in other states a railroad is listed, assessed, and valued as an entirety, and the value is then apportioned for taxation among the several municipalities by some standard prescribed by law, which generally is the length of line within the municipalities respectively. There is no constitutional objection to that method of taxing this species of property,³ and it is perhaps more just than any other.⁴

the items in which the capital is invested: *New Orleans v. New Orleans*, St. L. etc. R. Co., 37 La. An. 45. For peculiar questions respecting the taxation of capital, see *Lake Shore, etc. R. Co. v. People*, 46 Mich. 193.

¹ Bridge company held not to have been constituted by the statute a railroad company within the laws as to taxation: *Covington, etc. Co. v. O'Meara* (Ky.), 35 S. W. Rep. 1027. A certain company held to be a railroad corporation and taxable under the "act for the taxation of railroad and canal property:" *State v. Bettie*, 50 N. J. L. 132.

² *State Board v. Central R. Co.*, 48 N. J. L. 146, 278. Railroads constitute by themselves a class for the purposes of taxation: *State Railroad Tax Cases*, 92 U. S. 575.

³ *State Railroad Tax Cases*, 92 U. S. 575; *Union Pac. R. Co. v. Cheyenne*, 113 U. S. 516; *Maine v. Grand Trunk R. Co.*, 142 U. S. 17; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Cleveland, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 439; *Law v. People*, 87 Ill. 385; *Cleveland, C., C. &*

St. L. R. Co. v. Backus, 133 Ind. 513; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 133 Ind. 625; *Evansville & I. R. Co. v. West*, 138 Ind. 697; *Chicago, etc. R. Co. v. Davenport*, 51 Iowa 451; *Missouri River, etc. R. Co. v. Morris*, 7 Kan. 210; *State v. Severance*, 55 Mo. 378; *Richmond, etc. R. Co. v. Alamance County*, 84 N. C. 504; *Franklin County v. Railroad Co.*, 12 Lea 521. See *Minot v. Philadelphia, etc. R. Co.*, 18 Wall. 206. The New Jersey statute directing the valuation of railroad property to be made in a distributive mode, (1) on the main stem; (2) the other real property used for railroad purposes; (3) the tangible personal property; (4) the franchises, sustained: *Central R. v. State Board*, 49 N. J. L. 1. As to the distribution of the assessment among the municipalities in a county, see *Indiana, I. & I. R. Co. v. People*, 154 Ill. 554. In determining the length of a railroad for the purposes of apportionment among counties, only the length of the main track is to be considered: *Murphy v. Stone*, 119 Mo. 668. Apportionment of rail-

⁴ *State Railroad Tax Cases*, 92 U. S. 575; *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421; *Applegate v. Ernst*, 3 Bush 648.

In some states the assessing board apportions the aggregate value among the municipalities according to the estimated value of that part of the road with its improvements¹ lying within the limits of each,² and in still others the road-bed, right

road property among school-districts for taxation: *People v. Adams*, 125 N. Y. 471; *New York, P. & N. R. Co. v. Board of Supervisors*, 92 Va. 661. Apportionment to be among the towns and not among the road-districts in a town: *Ohio & M. R. Co. v. People*, 119 Ill. 207; *Chicago & N. W. R. Co. v. People*, 174 Ill. 80. Company cannot object to apportionment among road-districts in the county if aggregate of tax is not too large: *State v. Cincinnati, N. O. etc. R. Co.*, 13 Lea 500. Railroad track running through a tax-district created under the "one-mile assessment pike-law" is taxable in such district in the proportion that the mileage of its track therein bears to the whole track: *New York, L. E. & W. R. Co. v. Commissioners*, 48 Ohio St. 249. The apportionment among counties and cities of the franchise and roadway of a railroad must, in case of a re-assessment to take the place of an invalid assessment, be made to the counties as they existed at the time of the re-assessment: *San Diego County v. Riverside County*, 125 Cal. 495. As to what railroad property is "distributable," see *State v. Nashville & D. R. Co.*, 96 Tenn. 385. Under the Missouri statute it was held proper to assess the whole property of a street railroad whose line lay partly in two cities, and a part not within any city, in the manner prescribed for the assessment of the distributable property of other railroads: *State v. Metropolitan St. R. Co.*, 161 Mo. 188. That a street-railway system consists of several power plants at different places on the line, which line extends through or into several taxing districts, and also includes a plant outside the city, not assessable by

the city board, is no obstacle to the assessment of the property as a unit: *Detroit Citizens' St. R. Co. v. Common Council*, 125 Mich. 673. The Florida statute regulating the assessment of "railroads" by the state comptroller applies to an electric street railroad located in the streets of one city, and wholly situated in one county: *Bloxham v. Consumers' E. L. & St. R. Co.*, 36 Fla. 519. Where the value of railroad property is to be apportioned to each county according to the ratio of mileage, the assessment of a railroad by a county need not describe the property other than as so many miles of road of a given value; and a petition, in a suit to recover delinquent taxes, is sufficient if it sets forth the number of miles of road owned by the defendant railroad in a designated county: *State v. Hannibal & St. J. R. Co.*, 101 Mo. 136. Further as to such petition, see *Ibid.*

¹ In Illinois the improvements upon the realty are not to be valued separately: *Chicago, etc. R. Co. v. Livingston County*, 68 Ill. 458. A constitutional provision that "land" and the improvements thereon shall be assessed separately avoids an assessment against a railroad which describes the "land" occupied by the company as a right of way "together with" the track, etc.: *California & N. R. Co. v. Mecartney*, 104 Cal. 616.

² See *State v. Severance*, 55 Mo. 378. The estimates furnished by the directors of the school districts in the county sufficiently fix the rates from which to deduce an average rate for the taxation of railroad property for school purposes: *State v. Hannibal & St. J. R. Co.*, 135 Mo. 618.

of way, and superstructure are assessed as a whole by a state board,¹ while the buildings and local improvements are left to

¹ See *State v. Maine Central R. Co.*, 74 Me. 376; *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12. A railroad operated by electricity, and only used for carrying freight, was held not to be a street railway, and hence taxable only by the state board of assessors: *Hoboken R. etc. Co. v. State Board*, 64 N. J. L. 172. A road was held to be a street railway and therefore not within the statute providing for the assessment of railroads for taxation by the state executive council: *Cedar Rapids & M. C. R. Co. v. Cedar Rapids*, 106 Iowa 476. A railroad not the property of a railroad company nor operated under a franchise is not subject to taxation by the state board of assessors: *Monmouth Park Assoc. v. State Board*, 60 N. J. L. 372. A short line of railroad built and used by a manufacturing company for hauling its own materials was held not to be within the statute providing for assessment of railroad property by a state board: *Dayton v. Dayton, etc. Co.*, 99 Tenn. 578. As to what is included in the terms "right of way," "roadway," "road-bed," and "railroad track," see *Santa Clara County v. Southern Pac. R. Co.*, 118 U. S. 417; *California v. Central Pac. R. Co.*, 127 U. S. 1; *Central Trust Co. v. Wabash, St. L. etc. R. Co.*, 27 Fed. Rep. 14; *Keener v. Union Pac. R. Co.*, 31 Fed. Rep. 126; *New York Guaranty, etc. Co. v. Tacoma R. etc. Co.*, 93 Fed. Rep. 51, 35 C. C. A. 192; *Nashville & D. R. Co. v. State (Ala.)*, 30 South. Rep. 619; *St. Louis, I. M. & S. R. Co. v. Miller County*, 67 Ark. 498; *San Francisco v. Central Pac. R. Co.*, 63 Cal. 467; *Chicago, etc. R. Co. v. People*, 4 Ill. App. 468, 98 Ill. 350, 99 Ill. 464; *People v. Chicago & W. I. R. Co.*, 116 Ill. 181; *Chicago & A. R. Co. v. People*, 129 Ill. 571; *Chicago, B. & Q. R. Co. v. Quincy*, 136 Ill. 660; *Quincy, O. & K. C. R. Co. v. People*, 156 Ill. 437; *Chicago, M. & St. P. R. Co. v. Grant*, 167 Ill. 489; *Plaff v. Terre Haute & I. R. Co.*, 108 Ind. 144; *Detroit v. Wayne Circuit Judge (Mich.)*, 86 N. W. Rep. 1032; *State v. Mississippi River Bridge Co.*, 134 Mo. 321; *United N. J. R. Co. v. Jersey City*, 55 N. J. L. 129; *Chicago, M. & St. P. R. Co. v. Cass County*, 8 N. D. 18. A railroad bridge across a navigable river and owned by a railroad company as part of its line is assessable by the state board and not by the local assessor: *Anderson v. Chicago, B. & Q. R. Co.*, 117 Ill. 26; *Chicago, B. & Q. R. Co. v. Richardson County (Neb.)*, 85 N. W. Rep. 532 (overruling *Cass County v. Chicago, B. & Q. R. Co.*, 25 Neb. 348). A railroad bridge must be assessed with the railroad, though it is used also for the passage of carriage and foot-passengers, for which tolls are charged, and though railroad companies other than the one owning it are given the right to use it: *State v. Hannibal & St. J. R. Co.*, 97 Mo. 348. The state board may decide that railway bridges within a city's limits shall be assessed and taxed as part of the road-bed and superstructure: *Central Trust Co. v. Wabash, St. L. etc. R. Co.*, 27 Fed. Rep. 14. Bridges owned by bridge company but used by railroad company under lease or contract, held not property of railroad company for tax purposes, but subject to taxation as bridges: *St. Louis & S. F. R. Co. v. Williams*, 53 Ark. 58; *Chicago & A. R. Co. v. People*, 153 Ill. 409; *State v. Mississippi River Bridge Co.*, 109 Mo. 253, 134 Mo. 321. A steamboat used exclusively for railroad purposes could not be assessed by the county assessor, even if omitted by the railroad assessors: *Little Rock & M. R. Co. v. Williams*, 101

be assessed locally like the property of natural persons.¹ In thus assessing the road as a whole, the law in some states takes

Tenn. 146. Steamers used by a railroad company in transporting cars across water between its tracks are not taxable as part of the "roadway" or "road-bed," and therefore the state board cannot assess them: *California v. Central Pac. R. Co.*, 127 U. S. 1; *San Francisco v. Central Pac. R. Co.*, 63 Cal. 467. Fixed and stationary machinery attached to shops on a right of way is assessable only by the state board; otherwise as to a steam-boiler and engine not permanently attached to the realty: *Peoria, D. etc. R. Co. v. Goar*, 118 Ill. 134. A round-house, unless used as a repair shop, so as to make it such shop as well as a round-house, should be assessed by the state board and not by the local assessor: *Red Willow County v. Chicago, B. & Q. R. Co.*, 26 Neb. 660. Where the property has been returned to the state board as used for railroad purposes, and has escaped local taxation, it is too late to claim exemption from the valuation by such board: *State v. Bettie*, 50 N. J. L. 132. Under the Illinois statute it is sufficient to describe railroad property in the lists of property upon which road-taxes are levied as "railroad track," "proportion of rolling-stock," "rolling stock-main line," and "main track:" *Wabash R. Co. v. People*, 137 Ill. 181. Under the Arizona statute the value of each item need not appear in the assessment roll, and where it appeared that the board regarded the right of way and franchise as not taxable, the value of those items was not included in the total: *Atlantic & P. R. Co. v. Yavapai County (Ariz.)*, 21 Pac. Rep. 768.

¹See *Nashville & D. R. Co. v. State (Ala.)*, 30 South. Rep. 619; *St. Louis, I. M. & S. R. Co. v. Miller County*, 67 Ark. 498; *San Francisco, etc. R. Co.*

v. State Board, 60 Cal. 12; *Oregon S. L. R. Co. v. Yeates*, 2 Idaho 365; *Oregon Short-Line R. Co. v. Gooding (Idaho)*, 59 Pac. Rep. 821; *State v. Maine Central R. Co.*, 74 Me. 376; *Republican V. & W. R. Co. v. Chase County*, 33 Neb. 759. The local assessors have no authority to assess the lands on which a railroad's stock-yards are located: *St. Louis, I. M. & S. R. Co. v. Miller County*, *supra*. Fences along the line of a railroad are not "roadway" to be assessed by the state board of equalization, but are "improvements" assessable by the county authorities: *Santa Clara County v. Southern Pac. R. Co.*, 118 U. S. 394. A railroad company's buildings are subject to taxation, like other property, at the local rates fixed in the districts where situated, and not at the average rate throughout the county: *State v. Hannibal & St. J. R. Co.*, 110 Mo. 265. An elevator, built, owned and operated by private persons, is not taxable property used for railroad purposes, but is liable to taxation by the local authorities under the general law, even though such property may be used for the convenience of such companies in the conduct of their business: *Taxation of Erie R. Co.*, 64 N. J. L. 123. Building material of a railroad company must be listed for taxation in the county in which it is situated: *Chicago, B. & Q. R. Co. v. Hitchcock County*, 40 Neb. 781. A railroad company which has omitted some of its property from the schedule returned by it for assessment by the state board is estopped from asserting that such omitted property cannot be assessed by the town assessor because it should have been included in such schedule: *Indianapolis & St. L. R. Co. v. People*, 130 Ill. 62. Local assessors cannot assess a railroad right

into account the franchise as property, and requires it to be valued with the rest;¹ in others it does not. The rolling-stock and other personalty of the company should be assessed at the place of its home office unless some other provision is made by law;² but under some statutes the rolling-stock is considered real estate, and is estimated with the road itself.³

of way, even where, by mistake, but without fraud, the railroad company has not returned as right of way area enough to the state board: *Peoria, D. etc. R. Co. v. Goar*, 118 Ill. 134. Where a building is erroneously included in the taxation, for schools, of a railroad company's "road-bed, rolling-stock, and movable property," the county cannot recover the excess represented by the value of the buildings: *State v. Hannibal & St. J. R. Co.*, 135 Mo. 618.

¹ See *Huck v. Chicago, etc. R. Co.*, 86 Ill. 352; *State Board v. Central R. Co.*, 48 N. J. L. 146; *Central R. Co. v. State Board*, 49 N. J. L. 1; *Franklin County v. Railroad Co.*, 12 Lea 521. In Michigan the tangible property of a street railroad should be assessed as a unit, and privileges inseparably connected with the road should be considered, thus indirectly taxing the franchise: *Detroit Citizens' St. R. Co. v. Common Council*, 125 U. S. 673. See *Detroit Citizens' St. R. Co. v. Wayne Circuit Judge* (Mich.), 86 N. W. Rep. 1032.

² See *ante*, p. 674. The *situs* of rolling-stock is where it is habitually used. If constantly changing the amount may be fixed by the average amount so used: *Atlantic & P. R. Co. v. Lesueur* (Ariz.), 19 Pac. Rep. 157; *Atlantic & P. R. Co. v. Yavapai County* (Ariz.), 21 Pac. Rep. 768. Cars leased by a railroad company are not so "assessed" as to be liable to taxation: *State v. St. Louis County*, 84 Mo. 234. The Virginia statutes in relation to the taxation of the movable property of railroad corporations held to show on their face that they were not in-

tended to authorize the taxation of movable personalty of foreign railroad corporations: *Marye v. Baltimore & O. R. Co.*, 127 U. S. 117. Assessment of cars of foreign sleeping-car company: *Pullman's Palace Car Co. v. Board of Assessors*, 55 Fed. Rep. 206. Further on this subject see *ante*, p. 89.

³ *Sangamon, etc. R. Co. v. Morgan County*, 14 Ill. 163; *Maus v. Railroad Co.*, 27 Ill. 77; *Louisville, etc. R. Co. v. State*, 25 Ind. 177; *Dubuque v. Illinois, etc. R. Co.*, 39 Iowa 56; *Bangor, etc. R. Co. v. Harris*, 21 Me. 533; *Cumberland, etc. R. Co. v. Portland*, 37 Me. 444; *Philadelphia, etc. R. Co. v. Appeal Tax Court*, 50 Md. 397; *Baltimore, C. & A. R. Co. v. Commissioners* (Md.), 48 Atl. Rep. 853; *State v. Severance*, 55 Mo. 378; *Randall v. Elwell*, 52 N. Y. 521. See *Union Trust Co. v. Weber*, 96 Ill. 346. In Utah each county through which a railroad is operated is entitled to a tax on the average percentage of the company's rolling-stock used within the county as ascertained and apportioned by the state board: *Salt Lake County v. State Board*, 18 Utah 172. Taxation of rolling-stock of foreign corporations used on railroads within the state: *Marye v. Baltimore & O. R. Co.*, 127 U. S. 117; *Hall v. Am. Refrig. Transit Co.*, 24 Col. 291; *ante*, p. 89. Trustees in charge of a railroad whose main track is all outside the state, but whose trains are brought into the state over the tracks of another company, are "operating a railroad in this state" within the meaning of a statute requiring those so operating

Where a road is thus to be assessed as a whole, bridges, tunnels, easements in and over streets, and other things and rights of a like nature, are to be taken into account, and are not subjects of separate assessment;¹ while property not held or used for railroad purposes, but of which the corporation may have become owner, should separately be listed and taxed, unless the statute plainly makes a different provision.² Where one railroad company leases the lines of other companies as extensions of its own, under authority given by its charter, such leased lines should be taken into account, valued, and the value apportioned with the line of the lessee company.³

In other states, still, the local assessors are left to list and value such railroad property as is within their jurisdiction, including such part of the road-bed and superstructure as lies within their municipality, in the same manner as they would

to return schedules of personal property: *Quincy, O. & K. R. Co. v. People*, 156 Ill. 437. As to the return of rolling-stock for taxation, including leased cars, etc., see *Shawnee County Com'rs v. Topeka Equip. Co.*, 26 Kan. 363.

¹ *Central Trust Co. v. Wabash, St. L. etc. R. Co.*, 27 Fed. Rep. 14; *Anderson v. Chicago, B. & Q. R. Co.*, 117 Ill. 26; *Appeal Tax Court v. Western, etc. R. Co.*, 50 Md. 274; *State v. Hannibal & St. J. R. Co.*, 135 Mo. 618; *Chicago, B. & Q. R. Co. v. Richardson County (Neb.)*, 85 N. W. Rep. 532; *United N. J. R. & C. Co. v. Jersey City*, 53 N. J. L. 547. See *Metropolitan R. v. Fowler*, 1 Eng. Reports 264, (1893) App. Cas. 416.

² *Savannah, etc. R. Co. v. Morton*, 71 Ga. 24; *Chicago, B. & Q. R. Co. v. Quincy*, 136 Ill. 660; *State v. St. Louis & S. F. R. Co.*, 117 Mo. 1; *Red Willow County v. Chicago, B. & Q. R. Co.*, 26 Neb. 660; *United N. J. R. Co. v. Jersey City*, 53 N. J. L. 547; *Morris & E. R. Co. v. Newark*, 63 N. J. L. 310; *National Docks R. Co. v. Board of Assessors*, 64 N. J. L. 486; *In re Erie R. Co. (N. J.)*, 48 Atl. Rep. 601. Compare *Hannibal, etc. R. Co. v. State*

Board, 64 Mo. 294, where it was held that under the Missouri statute the land contracts of a railroad company were to be taken into the account, and valued with the road. See also, *Wright v. Southwestern R. Co.*, 64 Ga. 783. Where a steam railroad company operated on the same tracks with its steam cars an electric railway, the corporeal property constituting the equipment of the electric line was properly assessed as property not used for railroad purposes: *Camden & A. R. Co. v. Atlantic City*, 58 N. J. L. 316.

³ *Huck v. Chicago, etc. R. Co.*, 86 Ill. 352. Compare *State v. Southwestern R. Co.*, 70 Ga. 11; *Wright v. Southwestern R. Co.*, 64 Ga. 783; *People v. Reed*, 64 Hun 553. Property in a railroad company's possession as of right, necessary for its franchise and used for railroad purposes, is, irrespective of its ownership, property upon which the company may be taxed: *In re Erie R. Co. (N. J.)*, 48 Atl. Rep. 601. As to the assessment of an equipment company, see *Shawnee County Com'rs v. Equipment Co.*, 26 Kan. 363; *Richmond, etc. R. Co. v. Alamance County*, 84 N. C. 504.

any other property.¹ In valuing railroad property it must be estimated by the same standards as are used in valuing other property.² A railroad track cannot be assessed as non-resident real estate, that term being applied only to property not occu-

¹ See *Columbus S. R. Co. v. Wright*, 89 Ga. 574; *The Tax Cases*, 12 Gill & J. 107; *Sangamon, etc. R. Co. v. Sangamon County*, 14 Ill. 163; *State v. Illinois Central R. Co.*, 27 Ill. 64; *Morgan's L. etc. R. Co. v. Board of Receivers*, 41 La. An. 1156; *State v. Metropolitan St. R. Co.*, 161 Mo. 188; *Albany, etc. R. Co. v. Osborn*, 12 Barb. 223; *Albany, etc. R. Co. v. Canaan*, 16 Barb. 244; *Providence, etc. R. Co. v. Wright*, 2 R. I. 459.

² *The Tax Cases*, 12 Gill & J. 117; *Chicago, etc. R. Co. v. Livingston County*, 68 Ill. 458; *Detroit Citizens' St. R. Co. v. Common Council*, 125 Mich. 673; *State v. Missouri Pac. R. Co.*, 92 Mo. 137. See *Boston, C. & M. R. Co. v. State*, 62 N. H. 648. Ascertaining value of part of railroad brought within city by extension of city limits: *Louisville & N. R. Co. v. Commonwealth (Ky.)*, 30 S. W. Rep. 624. In assessing for taxation the real estate of a railroad company within a town, consisting of a part of its line with track, sidings, stations, etc., the valuation thereof cannot legally be based upon the cost, rentals, and earnings of the whole railroad, but the just and reasonable rule of valuation of such real estate is to fix its value at a sum not exceeding the cost of reproducing it: *People v. Clapp*, 152 N. Y. 490, and see *People v. Reed*, 64 Hun 553. The cash value of railroad property as assessed for taxes is the cash price for which it would sell, not at a forced sale; and such value is to be estimated, in part, by the road's net earnings, but cannot be fixed on the basis of the cost of construction: *Morgan's L. etc. Co. v. Board of Reviewers*, 41 La. An. 1156. The amount expended in the partial construction of a railroad is

not the criterion of the value of the part constructed, but the difference in cost of construction, decay of trestles, abutments, etc., and damages to embankments by rains, are to be considered; *Owensboro & N. R. Co. v. Logan County (Ky.)*, 11 S. W. Rep. 76. To ascertain a railroad's earning capacity the assessors may properly refer to the company's reports, made under oath, and as required by law: *People v. Hicks*, 105 N. Y. 198; see *People v. Barker*, 6 App. Div. 356. Determining from cost, earnings, etc., value of railroad for purposes of taxation: *State v. Virginia & T. R. Co.*, 23 Nev. 283, 432, 24 Nev. 53; *Central R. v. State Board*, 49 N. J. L. 1; *People v. Assessors*, 2 N. Y. Supp. Rep. 240, 17 N. Y. Super. Ct. Rep. 980; *Oregon & C. R. Co. v. Jackson County (Or.)*, 64 Pac. Rep. 307. As to valuation of railroad track per mile, see *St. Louis B. & T. R. Co. v. People*, 127 Ill. 627; *Cleveland, C. C. & St. L. R. Co. v. Backus*, 133 Ind. 513; *People v. Hicks*, 40 Hun 598. Ascertainment of value of taxable personalty of railway company within one-mile pike-law assessment district: *New York, L. E. & W. R. Co. v. Commissioners*, 48 Ohio St. 249. How cash value of street railway ascertained for taxing purposes: *Detroit Citizens' St. R. Co. v. Common Council*, 125 Mich. 673. If property used as a street railroad may be assessed as a unit, there is no obligation to value its separate elements; the processes by which assessors arrived at the value are immaterial, in so far as they affect the validity of the assessment, if they finally conclude that it is honestly worth in the market, in cash, the sum assessed: *Ibid.* Where tax assessors discriminate against a railroad by assessing

pied or used.¹ It has, however, been held that a tax on railroad property is not invalid by reason of its being assessed in the wrong name as owner;² but a railroad and the franchise cannot be assessed to a construction company which built the road, though the company was still in possession.³ Where a railroad is assessed at a given sum per mile, and a part of it only is taxable, the whole assessment is not invalidated; the rule being that an assessment of any property is void when the valid part of any of the tax cannot be separated, but not so when it is separable.⁴ In Connecticut the valuation of railroad property made by the board of equalization, as directed by the statute, constitutes a sufficient assessment of the state tax upon railroads.⁵ Lines of railroads cannot, by statute, be made taxable for years during which they were not in existence; nor can they be subjected to sale for payment of taxes due on other railroads by reason of their becoming the property of the corporation that owns the railroads liable to taxation.⁶

Insurance companies. This class of corporations is generally required to pay a franchise tax.⁷ The methods of measuring

its property at its full valuation, while private property is only assessed at one-fourth its valuation, and the railroad pays such illegal tax under protest, it is entitled to recover the taxes so paid: *St. Louis & S. F. R. Co. v. Board of Com'rs* (Kan.), 66 Pac. Rep. 1045; and see *ante*, p. 333. "Fee damages" and rental damages paid by elevated railroad company, how considered in assessing its property: *People v. Barker*, 165 N. Y. 305.

¹ *People v. Barker*, 48 N. Y. 70; *Buffalo, etc. R. Co. v. Supervisors*, 48 N. Y. 93.

² *Union Trust Co. v. Weber*, 96 Ill. 346.

³ *Union Trust Co. v. Weber*, 96 Ill. 346.

⁴ *United States Trust Co. v. Territory* (N. M.), 62 Pac. Rep. 987, citing *Santa Clara County v. Southern Pac. R. Co.*, 118 U. S. 394, and *California v. Central Pac. R. Co.*, 127 U. S. 1. Tracks over which a railroad com-

pany runs its trains, but which are not exclusively controlled by it, should not be computed as part of its mileage: *Detroit, G. R. & W. R. Co. v. Railroad Com'r*, 119 Mich. 132. Where a railroad company knowingly made an incorrect report of the length of its line within a school district, it cannot object to a tax levy on the ground that no notice was given it as to the extent of its property subject to taxation, or the amount of the assessment: *Board of Trustees v. Louisville & N. R. Co.* (Ky.), 30 S. W. Rep. 620. Rule for estimating for taxation the mileage of a union railroad station and depot company: *Fort Street Union Depot Co. v. Railroad Com'r*, 118 Mich. 340.

⁵ *State v. New York, N. H. & H. R. Co.*, 60 Conn. 326.

⁶ *Bloxham v. Florida Central & P. R. Co.*, 35 Fla. 625.

⁷ A statute having provided for levying an annual excise on the fran-

it are quite diverse. Sometimes it is by the premium money received within the year;¹ and when this is the case the premiums received for insurance out of the state may be included, if the terms of the statute are such as to require it.² Sometimes it is on a net valuation of policies held in the state,³ sometimes on surplus earnings over some specified allowance for dividends,⁴ sometimes on the gross receipts,⁵ sometimes on the

chises of insurance companies, it was held that the spirit of the law required a deduction of the value of mortgages of land owned by the company and subject to local taxation: *Firemen's F. Ins. Co. v. Commonwealth*, 137 Mass. 80.

¹ *People v. Thurber*, 13 Ill. 554; *Scottish Union, etc. Ins. Co. v. Herriott*, 109 Iowa 606; *People v. State Treasurer*, 31 Mich. 6; *Ex parte Cohn*, 13 Nev. 424; *State v. Hahn*, 50 Ohio St. 714; *Germania L. Ins. Co. v. Commonwealth*, 85 Pa. St. 513. Premium notes and accounts of policy-holders must be assessed at their full par value: *Home F. Ins. Co. v. Lynch*, 19 Utah 189. The deduction of unearned and return premiums allowed by statute in estimating for an insurance license the "gross annual amount of premiums," includes "rebates" allowed from stipulated premiums in pursuance of antecedent contract: *State v. Hibernia Ins. Co.*, 38 La. An. 465. That the amount estimated by an insurance company of unearned premiums collected which would be returned to policy-holders on account of cancellations turned out to be less than the premiums actually returned, was held to be no ground for reducing the assessment against the company: *Home Ins. Co. v. Board of Assessors*, 48 La. An. 451. Unearned premiums actually refunded upon canceled policies are not to be reckoned as part of the "gross amount of premiums received," upon which a foreign insurance company is to pay a percentage

tax: *German Alliance Co. v. Van Cleave*, 191 Ill. 410. As to the reduction allowed in taxes by the New York statute on the amount of premiums received by a company reinsuring in companies authorized to issue policies in that state, see *People v. Reliance M. Ins. Co.*, 70 Hun 554. Reinsurance as to which suits are pending between an insurance company and the reinsurer are properly taxable against the company; *Home Ins. Co. v. Board of Assessors*, 48 La. An. 451. Statute providing for the payment by certain insurance companies on the amount of their premiums, construed as to the extent to which it relieved such companies from other taxation: *People v. Coleman*, 121 N. Y. 542. Whether premium money received for insurance on imports still remaining in the bonded warehouse can be included, see the conflicting cases of *People v. National F. Ins. Co.*, 61 How. Pr. 334, and *People v. National F. Ins. Co.*, 27 Hun 188.

² *Insurance Co. v. Commonwealth*, 87 Pa. St. 173. Compare *People v. National F. Ins. Co.*, 27 Hun 188.

³ *Connecticut Mut. L. Ins. Co. v. Commonwealth*, 133 Mass. 161.

⁴ *People v. Tax Com'rs*, 76 N. Y. 64.

⁵ Under a statute providing that if the capital of a foreign insurance company shall not have been taxed in any other state the company shall be taxed on its gross receipts, but providing no method for ascertaining the amount of gross receipts, and fixing no rate of taxation, the gross

capital,¹ and sometimes on the capital with the addition of any accumulated surplus.² There is no constitutional impediment to taxation by any of these standards.

receipts are not taxable: *British Foreign M. Ins. Co. v. Board of Assessors*, 49 Fed. Rep. 90. The mere receipt in another state by a foreign insurance company of renewal premiums from persons residing in the state who remit by mail or otherwise is not "doing business" in the state within the meaning of statutes imposing a tax on gross premium receipts from life insurance business: *State v. Insurance Co.*, 106 Tenn. 282.

¹ As to the taxation of capital of mutual life insurance companies, see *Coite v. Connecticut Mut. L. Ins. Co.*, 36 Conn. 512. *Where a mutual insurance company was authorized to accumulate from its profits a fund to continue liable for its losses during the term of its existence, such accumulation was held to be capital and liable to taxation as such: *Sun Mut. Ins. Co. v. New York*, 8 N. Y. 241; *People v. Supervisors*, 16 N. Y. 424; *Mutual Ins. Co. v. Supervisors*, 4 N. Y. 442. Where the capital of a life insurance company is divided into shares, and its stock is taxable by law against the respective stockholders at its market value, the property constituting a fund made up of certain sums set apart from payments made by the certificate holders, and held by a trust company under a contract made part of every certificate, and stipulating that the fund is the insurance company's property subject to the trust, is not taxable in the trust company's hands as property held in trust for the certificate holders: *Security Co. v. Hartford*, 61 Conn. 89. That a tax on the market value of the stock of corporations is

not applicable to the guaranty stock of a mutual life insurance company, which is redeemable from its earnings, such stock being rather in the nature of a debt of the corporation than stock as generally understood, see *Commonwealth v. Berkshire L. Ins. Co.*, 98 Mass. 25. A statute providing that insurance companies should pay a tax of a certain per cent on the market value of their shares held by non-residents was sustained in *State v. Travelers' Ins. Co.*, 73 Conn. 255. In assessing the property of an insurance company, the amount of its losses on policies issued by it cannot be taken into consideration to reduce the assessment: *Home Ins. Co. v. Board of Assessors*, 48 La. An. 451. Under statutes declaring that the taxable property of insurance companies shall be ascertained by deducting the value of the property on which the company pays taxes from its net assets, and that a real-estate mortgage shall be deemed an interest in land for the purposes of taxation, mortgages held by the company must be taxed to it and deducted from its net assets, though the mortgagers had agreed to pay the taxes: *Detroit Common Council v. Board of Assessors*, 91 Mich. 78; *Standard L. etc. Ins. Co. v. Board of Assessors*, 91 Mich. 517. See *Standard L. etc. Ins. Co. v. Board of Assessors*, 95 Mich. 466. The legislative requirement that an insurance company pay into the treasury a certain percentage upon its capital stock does not exempt it from further taxation or from taxation for municipal purposes, in the absence of such an exemption in its charter or by any stat-

² See *State v. Parker*, 34 N. J. L. 479, 35 N. J. L. 574; *People v. Coleman*, 112 N. Y. 565.

Foreign insurance companies may be required to pay a tax as a condition to doing business in the state, even if home companies are not taxed, or are taxed by a different standard.¹ The tax is not a regulation of commerce.² Notwithstanding that the insurance company is taxed, its agents may also be required to pay a license fee as such.³ An English joint-stock company, though not incorporated, is taxable as a "company incorporated or associated."⁴ A company conducted on the mutual co-operative plan, though it owns no property and accumulates no fund for the payment of its losses, but relies entirely upon assessments to meet losses, and obligates itself to pay only such amounts as the assessments may yield, is nevertheless taxable as an insurance company.⁵ So is an association which, while essentially a mutual life insurance company, restricts its membership to "free and accepted masons;" such

ute: *Kenton Ins. Co. v. Covington*, 86 Ky. 213. Company's statement, published and verified, as to the amount of the company's assets, held not disputable by company in an action for the reduction of such assessment based on the statement: *Home Ins. Co. v. Board of Assessors*, 48 La. An. 451.

¹ *Ducat v. Chicago*, 10 Wall. 410; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 566; *Doyle v. Ins. Co.*, 94 U. S. 535; *Ducat v. Chicago*, 48 Ill. 172; *Cincinnati Mut. H. Assur. Co. v. Rosenthal*, 55 Ill. 85; *Walker v. Springfield*, 94 Ill. 364; *Home Ins. Co. v. Swigert*, 104 Ill. 653; *Scottish Union, etc. Ins. Co. v. Herriott*, 109 Iowa 606; *Ex parte Cohn*, 13 Nev. 424; *Germania L. Ins. Co. v. Commonwealth*, 95 Pa. St. 513; *State v. Insurance Co.*, 106 Tenn. 282; *Fire Department v. Helfenstein*, 16 Wis. 136. Where the business of a foreign life insurance company is first licensed, and then by a subsequent law is subjected to a license in the form of a tax, such later law not intimating that the license has been withdrawn, the presumption is strong that the exaction is for revenue, and was not

intended as a condition precedent to the further doing of business: *San Francisco v. Liverpool, etc. Ins. Co.*, 74 Cal. 113. As to statutes providing for "reciprocity" taxes on foreign insurance companies, see *Union Central L. Ins. Co. v. Durfee*, 164 Ill. 186; *State v. Reinmund*, 45 Ohio St. 214.

² *Paul v. Virginia*, 8 Wall. 168.

³ *Walker v. Springfield*, 94 Ill. 364. Act taxing privilege of opening "an office or agency for insurance . . . for" foreign insurance companies was not affected by statutes requiring such companies to pay percentage taxes on premiums: *Memphis v. Carrington*, 91 Tenn. 511. What are agencies thus taxable: *New Orleans v. Rhenish West. Lloyds*, 31 La. An. 781; *New Orleans v. Insurance Co.*, 33 La. An. 10.

⁴ *Oliver v. Liverpool, etc. Co.*, 100 Mass. 531; *Liverpool, etc. Co. v. Massachusetts*, 10 Wall. 566.

⁵ See *Mut. F. Ins. Co. v. State*, 60 Miss. 395. The reserve fund of a mutual life insurance company organized on the co-operative plan, and having no capital stock, is subject to taxation: *Kansas Mut. L. Assoc. v. Hill*, 51 Kan. 636.

restriction does not make it a secret, benevolent, or fraternal society, so as to relieve it from taxation.¹ And a company incorporated for guaranteeing the fidelity of persons holding places of public or private trust, although it does not in its name designate itself an insurance company, is taxable under a statute imposing a tax on premiums of every insurance company except life insurance companies and mutual benefit companies.² If a title insurance company avails itself of statutory provisions and engages in the annuity, safe-deposit, and trust business, all of its property is subject to assessment and taxation under the general tax-law in the same manner as the property of annuity, safe-deposit, and trust companies.³

Manufacturing companies. Where manufacturing companies are made a class by themselves for taxation, a drydock company is not to be deemed such a corporation.⁴ A corporation engaged in the manufacture and sale of sewer-pipe and drain-tile, made from water, salt, and clay, is assessable under a law providing that one who holds personal property to increase the value thereof by manufacturing, or by the combination of different materials, with a view to profit by sale, is a manufacturer.⁵ A corporation formed "to furnish light, heat, and power for public and private uses" is not a purely manufacturing corporation within a statute providing that such corporations shall be assessed by local assessors; and its stock and franchise are assessable by the state board of equalization;⁶ nor is a gas company;⁷ nor is a corporation organized to carry on a general business of distilling liquors, and to deal in the same, and also to engage in dealing in cattle and other live-stock, and in malting and dealing in malts.⁸ The personalty of a manu-

¹ *Masonic Aid Assoc. v. Taylor*, 2 S. D. 324.

² *People v. Wemple*, 58 Hun 248.

³ *Nelson v. St. Paul Title, etc. Co.*, 64 Minn. 101.

⁴ *People v. Dock Co.*, 92 N. Y. 487.

⁵ *Iowa Pipe, etc. Co.'s Appeal*, 101 Iowa 170. This case holds that under a statute providing that the average value of the personal property held for the purpose of adding to its value by manufacture shall be valued for

taxation on those materials only which enter into the combination, the labor and fuel employed in manufacturing sewer-pipe are not to be considered.

⁶ *Evanston Electric Illum. Co. v. Kochersperger*, 175 Ill. 26.

⁷ *Ottawa Gas-Light, etc. Co. v. Downey*, 127 Ill. 201.

⁸ *Distilling, etc. Co. v. People*, 161 Ill. 101.

facturing corporation is properly taxed at the place named in the certificate of incorporation as that at which the corporate operations are to be carried on;¹ and if such a corporation does business in two counties, it is rightly taxed for personal property in the county where its principal financial office is located.² Under the Rhode Island statutes a manufacturing corporation having capital held in shares is in its corporate capacity taxable only for its real estate, and for personalty of certain specified kinds, so that a specific assessment of personal property is requisite.³

Building and loan associations. In Georgia the tax imposed on the stock of building and loan associations is one against the stockholders, and not on the franchise or corporate property.⁴ In North Carolina the capital stock of these associations is subject to taxation for state and county purposes.⁵ They cannot, in West Virginia, be assessed with a capital stock; the members are to be assessed for their shares.⁶ Such associations are taxable in New Hampshire for the sum of their net profits and the amounts paid in by shareholders, less the statutory exemption.⁷ If a building and loan association organized under the general law of Maryland amends its charter by special law, it subjects its shares of stock invested under the additional powers to taxation as provided by laws governing corporations organized under special laws.⁸ The Iowa statute providing for the assessment of the average value of the moneys and credits which have been in the possession of a corporation making loans has no application when loans are made in the corporation's name by private persons, but the corporation never had any of the moneys in its possession or control.⁹

¹ Chesebrough Manuf. Co. v. Coleman, 44 Hun 545.

² Peter Cooper's Glue Factory v. McMahon, 15 Abb. (N. Y.) N. Cas. 314.

³ Dunnell Manuf. Co. v. Newell, 15 R. I. 233.

⁴ Georgia State B. & L. Assoc. v. Savannah, 109 Ga. 63; Atlanta B. & L. Assoc. v. Stewart, 109 Ga. 80. The latter case holds that the obligation of a borrowing member is an asset

which may be taxed to the extent of its market value.

⁵ Charlotte B. & L. Assoc. v. Board of Com'rs, 115 N. C. 410.

⁶ Ohio Valley B. & L. Assoc. v. County Court, 42 W. Va. 818.

⁷ Rochester B. & L. Assoc. v. Rochester, 66 N. H. 173.

⁸ Salisbury Perm. B. & L. Assoc. v. County Com'rs, 86 Md. 615.

⁹ Farmers' L. & T. Co. v. Newton, 97 Iowa 502.

*Banks.*¹ There are various methods of taxing the business of banking. When it is carried on under corporate powers, the franchise is sometimes subjected to a specific tax; but taxes are also imposed which are measured by the capital stock, the assets, the deposits received, the profits made, etc. Real estate owned by a bank constitutes part of its assets within a statute providing that banks shall pay a privilege tax, the amount of which varies with their "capital stock or assets," in lieu of all other taxes.² It is also held that real estate of a bank is subject to taxation though the stock is taxed at its market value, which is based on the value of such real estate.³ Under an ordinance directing a tax "on all personal property, money, and credits, including all capital stock," a bank's personal property is to be ascertained by adding to the paid-up capital the stockholders' demand-notes for unpaid stock bearing interest and held by the bank.⁴ In ascertaining the amount of property of a savings bank liable to taxation, the amount of its deposits, being a liability, is to be deducted from its gross assets;⁵ and federal bonds owned by the bank are to be deducted from its apparent surplus over and above deposits.⁶ A

¹ An institution is a bank, within the meaning of a law imposing a license-tax on banks, if it receives deposits, allows interest thereon, and makes loans: *New Orleans v. Savings Inst.*, 33 La. An. 527. A trust company whose only business is investing its own capital in mortgages and selling such securities with the company's guaranty is not a banking corporation: *Selden v. Equitable Trust Co.*, 94 U. S. 419. The case arose under the federal revenue laws.

² *Vicksburg Bank v. Worrell*, 67 Miss. 47. Where a bank has not paid taxes as provided by a statute imposing a tax measured by the entire assets in lieu of all other taxes, it is not entitled to the benefits of the act, and it is to be taxed at the market value of its capital paid in: *Bank of Oxford v. Oxford*, 70 Miss. 504.

³ *County Sav. Bank v. Hewitt*, 112 Ala. 546. The banking-house with

the lot whereon it is erected, of any bank, is to be assessed to the bank in the district where it is located, and the value of such house and lot is not to be considered in determining the assessable value of shares in stockholders' hands: *Orange Nat. Bank v. Williams*, 58 N. J. L. 45.

⁴ *State Bank v. Richmond*, 79 Va. 113.

⁵ *People v. Barker*, 154 N. Y. 128. As to the taxation of savings societies in general, see *Savings Bank v. New London*, 20 Conn. 111; *Coite v. Society*, 32 Conn. 173; *State v. Sterling*, 20 Md. 502; *State v. Central Sav. Bank*, 67 Md. 292; *Westminster v. Westminster Savings Bank*, 92 Md. 62. It was held in the last-named case that the securities in which the deposits of a savings bank are invested are not taxable.

⁶ *People v. Barker*, 154 N. Y. 128. See, however, *Westminster v. Westminster Savings Bank*, 92 Md. 62.

bank should be assessed for taxes upon the stock of other corporations which it has acquired in the course of its business.¹ It is held in Rhode Island that the reserved profits of a savings bank, the charter of which empowers the directors by majority vote to "divide the whole property among the depositors in proportion to their respective interests therein," belong to the depositors, and are not taxable as the bank's property.² But deposits in a bank are, according to the general doctrine, its property, and taxable to it as such.³ It is, how-

¹ *Pacific Nat. Bank v. Pierce County*, 20 Wash. 675.

² *Mechanics' Sav. Bank v. Granger*, 17 R. I. 77. Tennessee statutes held to authorize the assessment of a bank's surplus and undivided profits: *State v. Bank of Commerce*, 95 Tenn. 221.

³ *State v. Carson City Sav. Bank*, 17 Neb. 146. In *Security Sav. Bank, etc. Co. v. Hinton*, 97 Cal. 214, the contention that debts of a loan and savings bank were not taxable to the bank because not ordinary deposits, but debts for borrowed money, repayable in the exact sum borrowed, was not sustained. Deposits in a state bank by stockholders to the face value of their stock, for which certificates of deposit were issued, were taxable to the bank: *State Exchange Bank v. Parkersburg*, 112 Iowa 104. A savings bank is taxable for the amount of its deposits if the value of its assets is equal to that amount, although it receives no income from some of them: *Union, etc. Savings Bank's Petition*, 68 N. H. 384. And one bank is not entitled to abatement of taxes because its surplus is not as large, relatively, as other such banks possess: *Ibid.* When the assets of a savings bank have been reduced in value below the amount due depositors, a petition for a corresponding abatement may be maintained: *Wolfeborough Sav. Bank's Petition*, 69 N. H. 84. Under a statute laying upon savings banks a percentage tax on the average

amount of deposits for the six months preceding, the tax is to be computed on the amount deposited, together with the interest and dividend accruing and payable to depositors, and does not include the bank's guaranty fund or undivided profits: *Suffolk Sav. Bank v. Commonwealth*, 151 Mass. 103. The word "deposits" as used in such statute means all the funds which the bank holds for investment: *In re Suffolk Sav. Bank*, 149 Mass. 1. Cheques and drafts upon other city banks constitute part of a bank's deposits "subject to payment by cheque or draft," and should be used in determining the average daily deposits for the purpose of taxation under the federal statute; but cheques of country banks deposited with such bank, which were not considered as subject to payment on cheque or draft until they had been sent to the respective country banks against which they were drawn and returned as good, should not have been included in the average daily deposits until such return was made: *Bank of the Metropolis v. Weber*, 41 Fed. Rep. 413. Moneys placed in a bank by the state treasurer to be disbursed by the bank as agent of the state, and which were held by the bank at its own risk, mixed with the general funds, were true "deposits," and computable as such in determining the sum subject to the federal tax: *Manhattan Co. v. Blake*, 148 U. S. 412.

ever, held in Kentucky that banks are not required to pay taxes on money deposited with them by their customers, or on assets representing it; banks being regarded in that state, by reason of the peculiar character of their business, as *quasi* trustees of the depositors, who are required under the law to pay a tax on the money deposited.¹ A time-deposit in a private bank is taxable to the depositor.² Where a tax upon the average amount of deposits is assessed against every bank doing business in the state, such tax is a franchise-tax; and as the right to lay it is measured in point of time by the exercise on the bank's part of the rights and privileges essential to the operation of its business, it cannot be assessed while a receiver is winding up the bank's affairs.³

If a bank is subject to a specific tax on its capital, it is not taxable on collaterals deposited for loans.⁴ Under an act providing for the assessment of the "paid-up capital" of savings banks, all money and moneyed assets resulting from payments on subscriptions and other obligations, where such payments are set apart and reserved as capital, are taxable,⁵ and so are surplus moneys and credits.⁶

It has been said in a recent case that in taxing the property of an incorporated state bank the general assembly may impose a tax either on the property or on the shares; but if they differ materially in value, the tax must be on the shares.⁷ A tax imposed on each share of a bank's capital stock in lieu of all other taxes was construed by the supreme court of the United States as applying to the shares of stock in the hands of the individual stockholders, and not to the capital stock.⁸ If the

¹ *Deposit Bank v. Daviess County*, 102 Ky. 174, 214.

² *Hall v. Greenwood County*, 27 Kan. 37. See *Savings Bank v. New London*, 20 Conn. 111; *Philadelphia Sav. Fund Soc. v. Yard*, 9 Pa. St. 359.

³ *State v. Bradford Sav. Bank & T. Co.*, 71 Vt. 234. In *Commonwealth v. Savings Bank*, 126 Mass. 526, and *Commonwealth v. Savings Bank*, 123 Mass. 493, it was held that a bank is taxable though temporarily enjoined.

⁴ *Waltham Bank v. Waltham*, 10 Met. 334.

⁵ *Davenport Bank v. Equalization Board*, 64 Iowa 140.

⁶ *Iowa State Savings Bank v. Burlington City Council*, 93 Iowa 119.

⁷ *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266. As to the statement required from bank officers showing amount and number of shares, etc., see *First Nat. Bank v. Bailey*, 15 Mont. 301.

⁸ *Bank of Commerce v. Tennessee*, 161 U. S. 134. And see *ante*, pp. 371, 372.

statute requires that the shares of incorporated banks shall be listed for taxation at their true value in money, the value of United States bonds held by a bank is not to be deducted from the capital stock in fixing for taxation the value of the shares held by its stockholders.¹ Where the statutes provide that bank-shares shall only be assessed after deducting the value of real estate taxed to the bank, and that mortgages upon realty shall be deemed an interest in land, mortgages held by a bank must be taxed to the bank and deducted from the value of the shares of its capital stock, though the mortgagers have agreed to pay the taxes.²

Often the laws provide that taxes on shares of bank stock shall be paid by the bank, and that they may recover from the owners of such shares the amount so paid by them.³

A statute providing that state and national banks, and "other institutions of loan and discount," shall be taxed in a certain

¹ *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266. The nature of the way in which a bank's assets are invested (e. g. in non-taxable bonds) in no way affects its liability to taxation: *Bank of Oxford v. Oxford*, 70 Miss. 504.

² *Detroit Common Council v. Board of Assessors*, 91 Mich. 78, 509.

³ See *First Nat. Bank v. Hungate*, 62 Fed. Rep. 548; *Stapylton v. Thaggard*, 91 Fed. Rep. 93, 33 C. C. A. 353; *Farmers' & T. Nat. Bank v. Hoffman*, 93 Iowa 119; *Bank of Santa Fe v. Buster*, 50 Kan. 356; *First Nat. Bank v. Lyman*, 59 Kan. 410; *State v. Catron*, 118 Mo. 280; *State v. Merchants' Bank*, 160 Mo. 640; *Union Bank v. Richmond*, 94 Va. 316. Evidence that bank had not declared a dividend for a year previous to the levy of an assessment on its capital stock, and that the surplus which it reported after the assessment was made was worthless by reason of the shrinkage of the securities composing it, sustains a finding that after the assessment the bank had no money of the shareholder with which to pay the tax: *Farmers' etc. Nat. Bank v. Hoffman*, 93 Iowa 119. A tax imposed on the shares of a bank under the Louisi-

ana statute which requires the bank to pay the tax and then look to dividends and to the stockholders for reimbursement, was, in *Citizens' Bank v. Board of Assessors*, 54 Fed. Rep. 73, held to be a tax upon the bank itself. Under authority to levy a tax on the shares of stock of a bank, the tax may be collected from the bank instead of the individual stockholders, the statute making the place where the bank is located the *situs* of its stock for the purposes of taxation: *Union Bank v. Richmond*, 94 Va. 316. On an assessment of bank stock under a statute making banks agents for their respective shareholders, and authorizing the collection from each bank of taxes on its stock assessed against it as such agent, if the statute is not complied with by charging the bank on the assessment roll, the bank not being even referred to by its proper corporate name in the assessments against the shareholders, the warrant to the collector conferred no authority to seize the bank's property for the purpose of enforcing the payment of taxes charged against shareholders: *First Nat. Bank v. Hungate*, 62 Fed. Rep. 548.

manner in full of all state, county, and municipal taxes, has reference only to incorporated "institutions," and does not apply to a private unincorporated bank; the latter is taxable under the general law.¹ Where an act relating to private banks provides that a statement shall be made before a notary public setting forth the name in which the business is to be conducted, it will be presumed that the name under which the business is conducted was the one selected by the parties in interest, against which, upon a return by the president, tax assessments may properly be made.² Under a statute taxing the "average value of the moneys and credits which have been in the possession or under the control" of a private banker, only his own moneys and credits are taxable.³

National banks. By the act of congress of June 3, 1864, the shares of stock held by any person or body corporate in any of the national banks are allowed to be included in the valuation of personal property "in the assessment of taxes imposed by or under state authority, at the place where such bank is located, and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state," and not exceeding "the rate imposed upon the shares of any of the banks organized under the authority of the state" where the bank is located; and nothing in the act is to exempt the real estate of such banks "from either state, county, or municipal taxes, to the same extent, according to its value, as other real estate is taxed."⁴ Under this

¹ *Bowling Green v. Potter*, 91 Ky. 66. Error in amount of taxes of unincorporated bank, resulting from an erroneous deduction, may be corrected by the county auditor upon the current duplicate: *Fayette County Treasurer v. People's, etc. Bank*, 47 Ohio St. 503.

² *State v. Bank of Neosho*, 120 Mo. 161.

³ *Branch v. Marengo*, 43 Iowa 600. As to tax on commissions, see *Citizens' Bank v. Sharp*, 53 Md. 521.

⁴ A state cannot tax a bank chartered by congress except upon its real property: *Stapylton v. Haggard*, 91

Fed. Rep. 93. As to the taxation of real estate of national banks, see *Second Nat. Bank v. Caldwell*, 13 Fed. Rep. 429. The realty of national banks held not taxable under the statutes of Texas: *Rosenburg v. Weekes*, 67 Tex. 578. The value of the realty must be deducted in taxing national bank shares if it is deducted in taxing shares of a state bank: *Loftin v. Citizens' Nat. Bank*, 85 Md. 341. Where a national bank is taxed for lands paid for out of its capital stock, the assessment upon its shares should be made after deducting from its cash value the value

act, if no tax is imposed by the state on shares in state banks, the shares in the national banks are not taxed at all.¹ This difficulty was met with in states whose laws taxed the capital of banks, but not the shares thereof.² The act was not intended to restrict the state power of taxation, but only to prevent unfriendly discrimination in taxation against the moneyed capital invested in national banks.³

The act does not admit of the taxation of the capital as such,⁴ or of the personal property as such,⁵ or of mortgages

of such lands: *First Nat. Bank v. City Council*, 86 Iowa 23. Under the New York tax law the assessed and not the actual value of realty should be deducted in assessing national bank stock: *Jenkins v. Neff*, 163 N. Y. 320. The assessed value of real estate owned by a bank in states other than that in which the bank is located is not to be deducted in determining the amount of the assessable property of the bank, unless authorized by the laws of the state in which the bank is situated: *Commercial Nat. Bank v. Chambers*, 182 U. S. 556.

¹ *Van Allen v. Assessors*, 3 Wall. 573; *Bradley v. People*, 4 Wall. 459.

² *Bradley v. People*, 4 Wall. 459; *Smith v. First Nat. Bank*, 17 Mich. 479.

³ *Adams v. Nashville*, 95 U. S. 19; *Mercantile Nat. Bank v. New York*, 121 U. S. 138; *Palmer v. McMahon*, 133 U. S. 660; *First Nat. Bank v. Herbert*, 44 Fed. Rep. 158. A case of discrimination against national banks within the purview of the act of congress arises only when the moneyed capital employed in the hands of individual owners in carrying on operations of the same character as those of national banks is

of some considerable amount, and is exempt by operation of law or by the wilful act of the assessors: *Washington Nat. Bank v. King County*, 9 Wash. 607. A statute for taxing the surplus capital of banks will be applied to national and state banks alike: *National Bank v. Peterborough*, 56 N. H. 38. As to the assessment of the surplus of a national bank, and the distribution of the amount among the individual shareholders, see *People v. Button*, 63 Hun 624.

⁴ *Collins v. Chicago*, 4 Biss. 472; *First Nat. Bank v. Richmond*, 39 Fed. Rep. 309, 42 Fed. Rep. 877; *Boston v. Beal*, 51 Fed. Rep. 306; *Smith v. First Nat. Bank*, 17 Mich. 479. See *National Bank v. Douglass County*, 3 Dill. 330; *National Bank of Mobile v. Mobile*, 62 Ala. 284; *People v. National Gold Bank*, 51 Cal. 508; *Farmers' etc. Bank v. Hoffman*, 93 Iowa 119; *Smith v. Webb*, 11 Minn. 378; *First Nat. Bank v. Meredith*, 44 Mo. 500; *Lemly v. Commissioners*, 85 N. C. 379; *Gray v. Logan County*, 7 Okl. 321. The shares in a national bank cannot be listed and valued in the aggregate, and such aggregate placed on the tax-list in the bank's name. Such shares when

⁵ *Rosenblatt v. Johnson*, 104 U. S. 462; *Mercantile Nat. Bank v. New York*, 121 U. S. 138; *San Francisco v. Crocker, etc. Nat. Bank*, 92 Fed. Rep. 273; *National Bank v. Long (Ariz.)*, 57 Pac. Rep. 639; *People v. National Bank*, 123 Cal. 53; *First*

Nat. Bank v. San Francisco, 129 Cal. 96; *First Nat. Bank v. Province*, 20 Mont. 374. The property of a national bank continues exempt after insolvency as well as before: *Rosenblatt v. Johnson*, *supra*.

held by national banks;¹ and the shares must be taxed by the same standards which are applied in the case of other moneyed capital.² If the state law, justly administered, would produce

listed and valued for taxation are required to be placed on the proper tax-list in the names of the respective owners: *Miller v. First Nat. Bank*, 46 Ohio St. 424. The refusal of the officers of a national bank to furnish the assessor with a list of shareholders does not warrant assessing and enforcing the tax against bank property. An assessment of taxes against national bank stock must be against the shareholders personally: *Springfield v. Springfield Bank*, 87 Mo. 441. Taxes upon national bank shares cannot be collected against the receiver of an insolvent national bank, as this would in effect be taxing the capital stock: *Boston v. Beal*, 51 Fed. Rep. 306, 55 Fed. Rep. 26; *Stapylton v. Thaggard*, 91 Fed. Rep. 93, 33 C. C. A. 353; *Gray v. Logan County*, 7 Okl. 321; *Baker v. King County*, 17 Wash. 622.

¹ *First Nat. Bank v. Kreig*, 21 Nev. 404.

² *Van Allen v. Assessors*, 3 Wall. 573; *People v. Tax Com'rs*, 94 U. S. 415; *First Nat. Bank v. Treasurer*, 25 Fed. Rep. 749; *Puget Sound Nat. Bank v. King County*, 57 Fed. Rep. 433; *McHenry v. Downer*, 116 Cal. 20; *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266. "Moneyed capital" means money employed in a business the object of which is to make profit by investing in securities by way of loan, discount, or otherwise, which from time to time are reduced again to money and reinvested: *Mercantile Nat. Bank v. Shields*, 59 Fed. Rep. 952. See, to the same effect, *First Nat. Bank v. Turner*, 154 Ind. 456. The term does not include capital that does not come into competition with the business of national banks: and exemptions from taxation,

made for reasons of public policy, and not as an unfriendly discrimination against investments in national banks, are not forbidden. It must be made to appear satisfactorily by the proofs that the moneyed capital claimed to be given an unjust advantage is of the obnoxious character: *First Nat. Bank v. Ayers*, 160 U. S. 660; *First Nat. Bank v. Chehalis County*, 166 U. S. 440; *First Nat. Bank v. Chapman*, 173 U. S. 205, 219; *Commercial Nat. Bank v. Chambers*, 182 U. S. 556; *Mechanics' Nat. Bank v. Baker* (N. J.), 48 Atl. Rep. 582; *Washington Nat. Bank v. King County*, 9 Wash. 607. Where capital is not so employed as to come into competition with the business of national banks, although in a general sense it is "moneyed capital," it may be taxed at a different rate from banking capital: *National Bank v. Baltimore*, 100 Fed. Rep. 24, 40 C. C. A. 254. The fact that bank shares are taxed at a higher rate than shares in other than moneyed corporations is not material provided they are not taxed higher than shares in other moneyed corporations or than personal property: *First Nat. Bank v. Waters*, 19 Blatchf. 242; see *Hepburn v. School Directors*, 23 Wall. 480; *Palmer v. McMahon*, 133 U. S. 660. Thus exemptions from taxation of deposits in savings banks are not a discrimination against national banks: *Mercantile Nat. Bank v. New York*, 121 U. S. 138; *Newark Banking Co. v. Newark*, 121 U. S. 163; *National Bank v. Boston*, 125 U. S. 60; *Mercantile Nat. Bank v. New York*, 28 Fed. Rep. 776; *Richards v. Rock Rapids*, 31 Fed. Rep. 505. So with the exemption of the stocks and bonds of insurance, wharf, and gas com-

uniformity, but the officers knowingly and purposely apply a different rule of valuation to the shares of national banks, in

panies, or other non-competing capital or credits: *First Nat. Bank v. Chehalis County*, 166 U. S. 440. So with a state law that taxes savings banks on the amount of their paid-up capital, and does not tax their shares held by individuals; it not appearing that a discrimination prohibited by the federal statute exists or was intended: *Davenport Nat. Bank v. Board of Equal.*, 123 U. S. 83, 64 Iowa 140. The New York banking law does not bring trust companies into competition with national banks, within the federal statute prohibiting states from taxing national bank shares at a greater rate than other moneyed capital: *Mercantile Nat. Bank v. New York*, 121 U. S. 138; *Jenkins v. Neff*, 163 N. Y. 320. See, however, as to New Jersey, *Mechanics' Nat. Bank v. Baker* (N. J.), 48 Atl. Rep. 582. Failure to tax shares of stock in building and loan associations does not invalidate a tax on national bank shares: *Consolidated Nat. Bank v. Pima County* (Ariz.), 43 Pac. Rep. 291. Nor is the omission to tax municipal bonds, or the securities of life insurance companies, or the stock, owned in the state, of foreign corporations, a prohibited discrimination: *Mercantile Nat. Bank v. New York*, 121 U. S. 138; *Newark Banking Co. v. Newark*, 121 U. S. 163. Nor is the national bank law violated by state legislation imposing franchise taxes upon life insurance companies with respect to the number of their shares, upon trust and similar companies with regard to the amount of their deposits, and upon telephone companies based on the number of telephones which they use: *National Bank v. Boston*, 125 U. S. 60. The federal statute concerning taxation of shares of national banks is not infringed by an act exempting shares in corporations the entire capital of which is invested in assessable property in the territory: *Talbott v. County Com'rs*, 139 U. S. 438; *Silver Bow County v. Davis*, 6 Mont. 306. As to what exemptions of other property would invalidate taxation of national banks, see *Boyer v. Boyer*, 113 U. S. 689. The owner of national bank stock is not discriminated against by a statute taxing unincorporated state banks on a valuation based on the difference between their assets and liabilities: *Bressler v. Wayne County*, 32 Neb. 834. The valuation of shares in national banks is not necessarily limited to the par value: *Hepburn v. School Directors*, 23 Wall. 480. A rule adopted by a city board of assessors to assess at par all shares of stock in state and national banks in the city, without regard to their actual or market value, but making the requisite reduction for real estate owned by the banks, does not conflict with the federal statute: *Stanley v. Albany County*, 121 U. S. 535; *Williams v. Albany County*, 122 U. S. 154. Before an assessment of national bank shares can be held invalid it must be shown that there is in fact a higher tax imposed on them than on other moneyed capital, and it is not enough to show merely that the state laws provide a different mode of taxing moneyed capital invested in savings banks or other corporations: *Richards v. Rock Rapids*, 31 Fed. Rep. 505. A state law taxing national banks upon the valuation of their shares, while state banks are taxed upon a valuation of their franchise, is *prima facie* discriminative, and can only be sustained by proof that in operation the two methods of valuation are equivalent:

order to impose disproportionate taxes upon them, the courts will give relief.¹ Such shares are not taxable under a state

First Nat. Bank v. Covington, 103 Fed. Rep. 523. *Contra*, *Scobee v. Bean* (Ky.), 59 S. W. Rep. 860. A statute requiring shares of national banks to be assessed and taxed for previous years during which an invalid law for the taxation of such banks was in existence, is invalid where there is no corresponding provision in any law of the state for the retroactive taxation of moneyed capital in the hands of state banks or of individuals: *First Nat. Bank v. Covington*, 103 Fed. Rep. 523. The federal statute does not forbid discrimination between national banks, but only as between such banks and state banks, or other moneyed capital in the hands of private individuals; and a state statute which gives both state and national banks the same privileges is not objectionable: *Merchants', etc. Nat. Bank v. Pennsylvania*, 167 U. S. 461.

¹ *Pelton v. National Bank*, 101 U. S. 143; *Cummings v. National Bank*, 101 U. S. 153; *Whitbeck v. Mercantile Bank*, 127 U. S. 193; *St. Louis Nat. Bank v. Papin*, 4 Dill. 29; *Covington City Nat. Bank v. Covington*, 21 Fed. Rep. 484; *Exchange Nat. Bank v. Miller*, 19 Fed. Rep. 372. See *Boyer v. Boyer*, 113 U. S. 689. The use of separate assessment rolls cannot be made a means of discrimination against national bank shares: *People v. Coleman*, 44 Hun 47. The case must, however, be plain to justify interfering to enjoin the tax: *First Nat. Bank v. Farwell*, 10 Biss. 270, 7 Fed. Rep. 518; see *National Bank v. Kimball*, 103 U. S. 732. The mere fact that property other than that of a national bank was assessed at a lower rate without any design or systematic effort on the assessors' part would not justify an injunction to restrain the collection of the tax:

Albuquerque Nat. Bank v. Perea, 147 U. S. 87. But a tacit understanding whereby, throughout the state, national bank shares are in fact discriminated against, affords ground for an injunction; as where the state board of equalization adopts one standard for national banks and a lower standard for state banks, a discrimination against the former thus resulting: *Toledo Bank v. Lucas County Treasurer*, 25 Fed. Rep. 749. Where it is sought to restrain collection of taxes on national bank shares as higher than those on other moneyed capital, a custom to assess property at fifty per cent of its value is not established by evidence that a few persons were assessed at that rate: *Engelke v. Schlender*, 75 Tex. 559. Whether national bank stock is, in violation of the act of congress, assessed at a rate greater than other moneyed capital in the hands of individual citizens of the state, is a question of fact to be decided by the evidence: *Mechanics' Nat. Bank v. Baker* (N. J.), 46 Atl. Rep. 586. And stockholders may require the courts to determine the question: *Mechanics' Nat. Bank v. Baker* (N. J.), 48 Atl. Rep. 582. Mere errors in assessing national bank stock will raise no federal question: *Williams v. Weaver*, 100 U. S. 547. A bank may, in behalf of its stockholders, have illegal taxation enjoined: *Cummings v. National Bank*, 101 U. S. 153; *Hills v. Exchange Bank*, 105 U. S. 319; *National Bank v. Wells*, 18 Blatchf. 478; *Albany Nat. Bank v. Maher*, 9 Fed. Rep. 884; *City Nat. Bank v. Paducah*, 2 Flipp. 61; *First Nat. Bank v. Covington*, 103 Fed. Rep. 523; *Mercantile Nat. Bank v. Hubbard*, 105 Fed. Rep. 809. Or bring an action in its own name to secure relief against excessive taxation of the capital stock:

statute for the taxation of personal property generally.¹ Whatever deductions are allowed in assessing shares of state banks or other moneyed capital must be allowed also in assessing the shares of national banks.² A license tax cannot be imposed

Citizens' Nat. Bank v. Columbia County, 23 Wash. 441. But a shareholder cannot complain of legislation that does not injure him: *Hills v. Exchange Bank*, 105 U. S. 319; *Supervisors v. Stanley*, 105 U. S. 305; *Stanley v. Supervisors*, 21 Blatchf. 241, 15 Fed. Rep. 483.

¹ *McHenry v. Downer*, 116 Cal. 20. It was held in *Scobee v. Bean* (Ky.), 59 S. W. Rep. 860, and in *Owen County Court v. Farmers' Nat. Bank* (Ky.), 59 S. W. Rep. 7, that as the statutes intended to apply to the taxation of banking associations and bank stocks had been declared void as to the national banks, shares in the latter were taxable in the owners' hands under the general law providing for the taxation of real and personal estate of every kind.

² *People v. Weaver*, 100 U. S. 539; *Evansville Bank v. Britton*, 105 U. S. 322; *Boyer v. Boyer*, 113 U. S. 689; *Stanley v. Albany County*, 121 U. S. 535; *Whitbeck v. Mercantile Nat. Bank*, 127 U. S. 193; *City Nat. Bank v. Paducah*, 2 Flipp. 61; *Richards v. Rock Rapids*, 31 Fed. Rep. 505; *Whitney Nat. Bank v. Parker*, 41 Fed. Rep. 402; *Pollard v. State*, 65 Ala. 628; *Maguire v. Mobile County*, 71 Ala. 401; *Miller v. Heilbrun*, 58 Cal. 133; *Wasson v. Indianapolis Bank*, 107 Ind. 206; *First Nat. Bank v. City Council*, 85 Iowa 736; *Peavey v. Greenfield*, 64 N. H. 284; *McAden v. Mecklenburg Com'rs*, 97 N. C. 355; *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266. Where, under the laws of the state, shares of stock are not included in the "credits" from which a taxpayer is allowed to deduct his *bona fide* indebtedness, the sharehold-

ers of national banks are not entitled to deduct their indebtedness from their shares of stock: *First Nat. Bank v. Chapman*, 173 U. S. 205; *Commercial Nat. Bank v. Chambers*, 182 U. S. 556; *First Nat. Bank v. Turner*, 154 Ind. 456; *Bressler v. Wayne County*, 32 Neb. 834; *Niles v. Shaw*, 50 Ohio St. 370; *Chapman v. First Nat. Bank*, 56 Ohio St. 310; *Burrows v. Smith*, 95 Va. 694; *First Nat. Bank v. Chehalis County*, 6 Wash. 64. Statutory provisions permitting deduction of indebtedness from "credits," which are defined to include deposits in savings banks and shares in building associations, do not necessarily discriminate against national banks and in favor of "other moneyed capital:" *Mercantile Nat. Bank v. Hubbard*, 98 Fed. Rep. 465. The mere fact that state laws permit some debts to be deducted from some moneyed capital for the purposes of taxation, but not for that which is invested in the shares of national banks, does not show a violation of the federal law unless it appears that the amount of moneyed capital in the state from which debts may be deducted was, as compared with the moneyed capital invested in national bank shares, so large and substantial as to amount to an illegal discrimination against national bank shareholders: *First Nat. Bank v. Ayers*, 160 U. S. 660. Under the Iowa code, in assessing national bank stock the holder thereof is entitled to deduct from its cash value the amount of his debts: *First Nat. Bank v. City Council*, 86 Iowa 28. Permitting private banks to deduct their deposits from their taxable assets does not discriminate against national banks, which, in the

upon national banks,¹ nor can the states exercise any control over them except as permitted by congress.² The shares cannot be taxed by municipalities when the shares of state banks are not so taxable.³ But the fact that two banks, by their charter, are specially taxed, will not preclude the taxation of the shares in the national banks by general law;⁴ neither are the shares to be excluded from taxation because some other classes of moneyed capital are exempt from taxation by laws of limited application.⁵ In assessing the shares it is not necessary to make a deduction in respect to capital invested in national securities,⁶ unless such deduction is allowed to be made by individuals.⁷ The state may tax the shares at the place where the bank is located, without regard to the residence of shareholders,⁸ and may require the tax to be paid by the

sworn statement they are required to render of the number of their shares, each share for its actual value, necessarily deduct deposits, as debts due the bank, in determining such value: *Engelke v. Schlender*, 75 Tex. 559. In *State Bank v. Board of Revenue*, 91 Ala. 217, it is held that if a statute allows the owner of shares in a national bank to deduct his indebtedness from their assessed value, this deduction may likewise be made from shares in a state bank, for a discrimination is forbidden by the state constitution.

¹ *Owensboro Nat. Bank v. Owensboro*, 173 U. S. 664; *Third Nat. Bank v. Stone*, 174 U. S. 432; *First Nat. Bank v. Louisville*, 174 U. S. 438; *Macon v. First Nat. Bank*, 59 Ga. 648. See *Second Nat Bank v. Caldwell*, 13 Fed. Rep. 429.

² *Farmers', etc. Bank v. Dearing*, 91 U. S. 329; *Covington City Bank v. Covington*, 21 Fed. Rep. 484; *Macon v. First Nat. Bank*, 59 Ga. 648.

³ *Craft v. Tuttle*, 27 Ind. 332; *Wright v. Stiltz*, 27 Ind. 338. See *National Bank v. Long (Ariz.)*, 57 Pac. Rep. 639; *Howell v. Cassopolis*, 35 Mich. 471.

⁴ *Lionberger v. Rowse*, 43 Mo. 67, 9 Wall. 468.

⁵ *Everitt's Appeal*, 71 Pa. St. 216. See *Adams v. Nashville*, 95 U. S. 19; *Albany, etc. Bank v. Maher*, 19 Blatchf. 175.

⁶ *First Nat. Bank v. Farwell*, 10 Biss. 270, 7 Fed. Rep. 518; *First Nat. Bank v. Peterborough*, 56 N. H. 38; *First Nat. Bank v. Concord*, 59 N. H. 75; *Mechanics' Nat. Bank v. Baker (N. J.)*, 46 Atl. Rep. 586.

⁷ *Whitney Nat. Bank v. Parker*, 41 Fed. Rep. 402; *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266.

⁸ *McIver v. Robinson*, 53 Ala. 456; *Mechanics' Nat. Bank v. Baker (N. J.)*, 46 Atl. Rep. 586; *Williams v. Weaver*, 75 N. Y. 30; *Kyle v. Fayetteville*, 75 N. C. 445. See *Tappan v. Merchants' Nat. Bank*, 19 Wall. 490; *Buie v. Fayetteville*, 79 N. C. 267. But national bank stock cannot be taxed in any state other than that where the bank is located: *State v. Smith*, 55 N. J. L. 110. A non-resident's shares must be assessed in the taxing district where the bank is located: *Crossly v. Township Committee*, 62 N. J. L. 583. Where the owner of national bank stock does not live in the ward where the bank is located, and has no real estate there, his shares may be assessed on a special list, although he lives in another ward where he is

bank,¹ even though state banks are not compelled to do the same.² The shares of stock of a national bank are taxable, although owned by another national bank.³ National banks may be compelled to make disclosure of property, etc., as in other cases,⁴ the ordinary process for collection may be applied to them,⁵ and they are garnishable for the collection of the state's claims against stockholders for taxes.⁶ The federal act relating to the taxation of national banks applies to territories as well as to states.⁷

Foreign corporations. Foreign corporations⁸ doing business in the state are taxable the same as domestic corporations if

assessed on personalty: *McMahon v. Palmer*, 102 N. Y. 176. Under statutes providing in terms for the taxation of national bank shares for state, county, and town purposes only, and for uniform taxation, the shares of holders who reside within an organized fire-district in the town wherein the bank is situated cannot be assessed for fire-district purposes: *Rich v. Packard Bank*, 138 Mass. 527. Owners of national bank stock cannot be subjected to a personal liability for the taxes thereon: *New York v. McLean*, 57 App. Div. (N. Y.) 601.

¹ *National Bank v. Commonwealth*, 9 Wall. 353; *Lionberger v. Rowse*, 9 Wall. 468; *First Nat. Bank v. Chehalis County*, 166 U. S. 440; *Merchants' etc. Nat. Bank v. Pennsylvania*, 167 U. S. 461; *Whitney Nat. Bank v. Parker*, 41 Fed. Rep. 402. But a national bank cannot be compelled to use its assets to pay a tax on shares of its stock where it cannot reimburse itself against the stock as allowed by the statute: *St. John's Nat. Bank v. Bingham T'p*, 113 Mich. 203. See *Stapylton v. Thaggard*, 91 Fed. Rep. 93, 33 C. C. A. 353; *Farmers' & T. Nat. Bank v. Hoffman*, 93 Iowa 119. Such a bank is not liable primarily or as agent of the stockholders: *Albuquerque Nat. Bank v. Perea* (N. M.), 25 Pac. Rep. 776. Case of voluntary listing by bank of stockholders'

shares as its property for taxation; question of relief in equity: *Ibid*. In *Brown v. French*, 80 Fed. Rep. 166, it was held that a national bank which returned its capital for taxation was not estopped from setting up that the same was not subject to taxation.

² *Merchants', etc. Nat. Bank v. Pennsylvania*, 167 U. S. 461.

³ *National Bank v. Boston*, 125 U. S. 60; *Pacific Nat. Bank v. Pierce County*, 20 Wash. 675.

⁴ *Waite v. Dowley*, 94 U. S. 527; *First Nat. Bank v. Hughes*, 6 Fed. Rep. 737. State legislation empowering assessors to make demand for the lists of shareholders required by the act of congress to be kept subject to the inspection of the "officers duly authorized to assess taxes under state authority," is unnecessary: *Paul v. McGraw*, 3 Wash. 296. Indiana statutory provisions in regard to listing, etc., held inapplicable to national banks: *Eaton v. Union County Nat. Bank*, 141 Ind. 136, 159.

⁵ *National Bank v. Morrison*, 1 McCrary 204.

⁶ *First Nat. Bank v. Chehalis County*, 6 Wash. 64.

⁷ *Talbott v. County Com'rs*, 139 U. S. 438; *People v. Moore*, 1 Idaho 504; *Silver Bow County v. Davis*, 6 Mont. 306.

⁸ This term includes corporations organized under the laws of other

the terms of the statute are such as to warrant it.¹ But it is customary to classify them separately for taxation. A state may impose upon them any conditions it may see fit as a prerequisite to their doing any business within its borders;² thus it may require them to pay a specific license tax,³ or a sum proportioned to the amount of their capital within the state.⁴ The

states of the Union: *Horn Silver Mining Co. v. New York*, 143 U. S. 305.

¹ *People v. McLean*, 80 N. Y. 354. A statute providing that all personality within or without the state shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May does not apply to foreign corporations, as the word "inhabitant" means one whose domicile is in the place referred to, and the domicile of a corporation is in the state of its origin, and it retains that domicile irrespective of the residence of its officers or the place where its business is transacted: *Boston Inv. Co. v. Boston*, 158 Mass. 461.

² *Horn Silver Mining Co. v. New York*, 143 U. S. 305; *Dryden v. Grand Trunk R. Co.*, 60 Me. 512; *State v. Western Union Tel. Co.*, 73 Me. 518, 525; *Commonwealth v. New York, L. E. & W. R. Co.*, 129 Pa. St. 463. And see the cases cited *ante*, p. 95.

³ *Ducat v. Chicago*, 10 Wall. 410; *New York v. Roberts*, 171 U. S. 658; *Ducat v. Chicago*, 48 Ill. 172.

⁴ *Horn Silver Mining Co. v. New York*, 143 U. S. 305; *New York v. Roberts*, 171 U. S. 658. As to what constitutes an employment of capital within the state, see *People v. Campbell*, 138 N. Y. 543, 139 N. Y. 68; *People v. Roberts*, 154 N. Y. 1; *People v. Roberts*, 8 App. Div. (N. Y.) 201. Real estate within the state purchased by a foreign corporation with surplus moneys, and not occupied by it, is not a part of its capital within the state forming a basis for taxation: *People v. Wemple*, 150 N. Y. 46, 78 Hun 63. A foreign corporation's ac-

counts receivable, payable in New York for goods sold there at its New York house, are taxable there as capital invested: *People v. Barker*, 155 N. Y. 665, 157 N. Y. 159. Good-will of foreign corporation may, though intangible, be considered as one of the items of the capital employed by it in the state, on which a privilege tax is to be based: *People v. Roberts*, 159 N. Y. 70. In estimating the amount of capital stock employed in the state, the value of all goods on hand, and property and money on deposit and in business in the state, may be considered, but not sales made by sample at its business offices in the state to persons without the state, with delivery from its factory in another state: *People v. Wemple*, 133 N. Y. 323. Under the Pennsylvania statute requiring foreign corporations "doing business" in the state to pay a tax on their "capital stock," they were held taxable not on their whole capital stock, but only to the extent that they should bring their property for employment within the state: *Commonwealth v. Standard Oil Co.*, 101 Pa. St. 119. Assessment as for sums invested in business in the state held not excessive: *People v. Barker*, 72 Hun 638. The comptroller's decision in fixing the amount of capital employed within the state by a foreign company will not be disturbed unless clearly erroneous: *People v. Campbell*, 145 N. Y. 587; *People v. Roberts*, 82 Hun 352. Fixing the amount of capital stock in the case of a corporation whose capital is only partly employed

cases cited in the margin illustrate what constitutes, on the part of a foreign corporation, a "doing business within the state" so as to subject it to taxation there.¹ In an earlier

within the state: *People v. Horn Silver Mining Co.*, 105 N. Y. 76. Under a statute providing that a foreign corporation shall be taxed on its "franchise or business" on the basis of "the amount of capital stock employed within the state," such corporation is not taxable to a greater extent than the par value of the capital stock authorized by its charter: *People v. Roberts*, 4 App. Div. (N. Y.) 288, 39 N. Y. Supp. 448. Such proportion of the whole value of the stock of a non-resident corporation as the value of its tangible property in the state bears to the entire value of its tangible property is taxable as capital within such state: *County Com'rs v. Old Dominion S. S. Co.* (Va.), 39 S. E. Rep. 18.

¹ *Southern Cotton Oil Co. v. Wemple*, 44 Fed. Rep. 24; *People v. Horn Silver Mining Co.*, 105 N. Y. 76; *People v. American Bell Telephone Co.*, 117 N. Y. 241; *People v. Wemple*, 133 N. Y. 617; *People v. Campbell*, 139 N. Y. 68; *People v. Roberts*, 154 N. Y. 1. In New Jersey a pipe-line company organized under the laws of another state, but having a pipe-line extended across part of New Jersey, was liable to the license-tax: *Pipe-Line Co. v. Berry*, 52 N. J. L. 308. It was held in Pennsylvania that the ownership by an Ohio corporation of individual interests in partnerships doing business in Pennsylvania constituted a "doing of business" within the state, but that its ownership of shares in Pennsylvania corporations did not constitute such a "doing of business," nor did its ownership of oil bought in the state through brokers and others, and shipped out of the state to be refined, nor its ownership of interests in statutory limited part-

nerships: *Commonwealth v. Standard Oil Co.*, 101 Pa. St. 119. The capital stock of a foreign telephone company having no office or agent in Pennsylvania, and doing business there only in renting instruments to other corporations, which own the wires, etc., and operate the telephones under contracts made outside the state, is not taxable there, although the instruments remain the property of the company, which reserves the right in certain events to take possession of and operate them: *Commonwealth v. American Bell Tel. Co.*, 129 Pa. St. 217. To the same effect is *People v. American Bell Tel. Co.*, 117 N. Y. 241, where it was held the local companies were the licensees, not the agents, of the outside company which owned the telephones and licensed their use, and that the latter was not "doing business" in New York within the meaning of a statute taxing the gross earnings of telephone companies "doing business" in that state. As to what are a "shop" and the "stock in trade" of a foreign corporation doing business in the state, see *Boston Loan Co. v. Boston*, 117 Mass. 332. A foreign corporation which did some of its manufacturing in New York, though the greater part was done elsewhere, was within the exception of a statute providing that any foreign corporation doing business in New York should be taxable there, except manufacturing corporations "carrying on manufacture . . . within this state:" *People v. Wemple*, 133 N. Y. 323. As to what constitutes the establishment by a foreign corporation of a "continuous business" in New York, thus making merchandise imported by it for sale

chapter¹ are considered the jurisdiction of a state to impose taxes upon foreign corporations, and the effect of the interstate commerce clause of the federal constitution upon the power to tax such companies.

An express company's *situs* for taxation is not confined to the state by which the company was chartered or in which its home office is located.² Its intangible property, created by the acquisition of franchises or privileges, and the combined use of its tangible property in the several states, is distributed wherever the tangible property is located and the work done.³ Whether such a company is a corporation or a joint-stock partnership,⁴ the property owned by it may be assessed at the value thereof for the use to which the same is put, considering the company's entire business as a unit;⁵ and in determining the value of such

in the state taxable as capital invested in personal property, see *People v. Barker*, 157 N. Y. 159. A foreign corporation doing business in the state may be taxed on the business or the franchise; but a statute for the taxation of its business will be construed as intending the business in the state: *People v. Equitable Trust Co.*, 97 N. Y. 387.

¹ *Ante*, ch. III.

² See *ante*, p. 93.

³ *Adams Express Co. v. Ohio State Auditor*, 166 U. S. 185.

⁴ Under statutes taxing the stock of companies incorporated by other states and doing business in Pennsylvania, the capital stock of an express company which is a joint-stock association organized in New York and having its property vested in trustees in whose name all legal proceedings are conducted, the interests of the members being represented by transferable shares, and the company not being dissolved by a shareholder's death or insolvency, is not taxable, such a company not being a corporation: *Sanford v. Gregg*, 58 Fed. Rep. 620. A statute providing that personal property in the state, not exempt from taxation,

shall include all stocks not issued by the United States, applies to foreign express companies in the nature of partnerships, created for a specific period, and whose stock is divided into transferable shares: *Lockwood v. Weston*, 61 Conn. 211. And such statute applies to the stock of a foreign express company, whether it be an association or corporation: *Ibid.* An express company in New York was held to be not a mere private partnership, but a joint-stock company organized or incorporated under the laws of the state, and taxable under a statute requiring a franchise-tax from "every corporation, joint-stock company, or association whatever, now or hereafter incorporated or organized under any law of this state . . . and doing business in this state:" *People v. Wemple*, 117 N. Y. 136.

⁵ *Wells, Fargo & Co.'s Express v. Crawford County*, 63 Ark. 576. And hence an assessment of the property of such company is not excessive merely because it exceeds the value of the appliances used by the company, considered merely as appliances: *Ibid.*

property for taxation on the mileage basis,¹ it will be presumed, when the contrary is not shown by the company, that all owned in the several states in which the company operates is directly employed in the company's business.²

Assessment of real property. Tax laws in general give very careful and specific directions for the assessment of real property, and in doing so have in view for the most part the interests of those who are responsible for or may be concerned in their taxation. Very simple proceedings might suffice to enable the state to collect its revenues from lands if only its own interests were to be regarded; but as rights in any particular parcel of land are liable to be diversified and numerous, and as the duty to pay the tax, if neglected by the party primarily liable, is likely to fall secondarily on others who may be in ignorance of the neglect, a government careful of the interests of its individual citizens will not fail to make such provisions as will be reasonably certain to notify every party concerned of any default, and give him ample opportunity to protect his interest from sacrifice or forfeiture. The duty to do this becomes particularly manifest when it is remembered that real estate when sold for taxes seldom brings more than a small fraction of its real value. It may be assumed, therefore, as the general fact, that the directions given are intended to be carefully observed.³

General course. It is not customary to assess the owners of land for a sum in gross, estimated to be the value of the real estate owned or possessed by them; but the land is described and valued in parcels, in order that, if the owner fails to make

¹ See *ante*, pp. 93, 94. If special circumstances exist which require the value of a part of the property of an express or a railroad company to be deducted from the value of its plant, as expressed by the sum total of its stock and bonds, before any valuation by mileage could properly be arrived at, such should be shown: Pittsburgh, C., C. & St. L. R. Co. v. Backus, 154 U. S. 421; Adams Express Co. v. Ohio State Auditor, 165 U. S. 194.

² Adams Express Co. v. Ohio State Auditor, 165 U. S. 194, 166 U. S. 185. It will also be presumed that the board of commissioners in assessing an express company considered that part of the company's capital stock was not based on business done on railroads: Wells, Fargo & Co.'s Express v. Crawford County, 63 Ark. 765.

³ As to the requisites of a valid assessment, see *ante*, pp. 598-604.

payment, the land itself may be proceeded against.¹ No one can be taxed in respect to his ownership of land unless the land itself is within the jurisdiction of the taxing authority; his personal liability depending on the right to reach and tax the land.² The general policy of our law favors the taxing of all real property where situate;³ and the exceptions to this, as in the case of water-power,⁴ or of farms divided by township lines,⁵

¹ In Ohio, taxes and assessments, unless otherwise provided by statute, are levied upon the corpus of real property, and not upon the titles by which the same may be held: *St. Bernard v. Kemper*, 60 Ohio St. 244.

² See *ante*, pp. 84-86, 94, 249. Where real estate not within a certain city is assessed and taxed as though it were, a tax-deed founded upon a sale for the taxes is voidable at the landowner's instance: *Hoffman v. Woods*, 40 Kan. 382. That part of a bridge over a river separating two states which is in one of them is taxable there: *Kittery v. Portsmouth Bridge*, 78 Me. 93.

³ *Potter v. Orange*, 62 N. J. L. 192.

⁴ In Maine a water-power is not taxable in the town where the dam is, but in the town wherein are situated the mills to which it is applicable: *Union Water-Power Co. v. Auburn*, 90 Me. 60. The court in this case says: "Water as an element is not property any more than air. When used, its potential power becomes applicable by operating upon real property, thereby giving it value, and that value is a basis for the purpose of taxation. Such water-power is not taxable except indirectly in the valuation of mills with which it is used." There is in Connecticut a statute which provides for the listing and assessment of water-power in the town where it is appropriated and used, rather than in the town where the reservoir, or pond and dam creating it may be located; but this applies only to Connecticut towns,

and water-power created by a dam in that state is there taxable as real estate, although transmitted to and used in an adjoining state: *Quinebaug Reservoir Co. v. Union*, 73 Conn. 294. Whether a water-power created in Connecticut can be taxed there at a valuation based on its use in the adjoining state, *quære*: *Ibid.* In Massachusetts it is held that water-power cannot be taxed independently of the land on which the power is obtained: *Boston Manuf. Co. v. Newton*, 22 Pick. 22; *Lowell v. Middlesex County Com'rs*, 152 Mass. 372. And where a corporation owned the water of a pond, and all the dams, sluices, and water-ways connected therewith, but not the land thereunder, it, being in possession of the dam, was liable for the taxes on the real estate thereunder: *Flax-Pond Water Co. v. Lynn*, 147 Mass. 31. By the terms of the New Hampshire statute such powers or rights must be taxed in the town where the land of which they are a part is situated: *Winnipiseogee Lake Manuf. Co. v. Gifford*, 64 N. H. 337. And a water-power created by a dam across a river which divides two towns is taxable in each town to the value of the part therein, though it is used in but one town: *Amoskeag Manuf. Co. v. Concord*, 66 N. H. 562.

⁵ Sometimes it is provided by statute that a farm lying in two taxing-districts may be taxed in the district wherein is the residence of the owner or occupant. See *ante*, p. 251; *State v. Dally*, 47 N. J. L. 84; *Warren*

or of non-residents' lands in school districts,¹ are apparent rather than real. Reference has already been made to the locality of taxation of underground pipes of water and gas companies,² and of the various properties of railroad companies.³

Classification of lands. Among the most useful of the provisions for the protection of persons taxed is one that unoccupied, unseated, or non-resident lands, as they are variously designated, shall be assessed on a different list from the occupied or seated lands; or if not on a different list, then on a different part of the same list. The purpose is that the two distinct classes of land shall be assessed separately, so that the owner or other person interested in any parcel, knowing its character as occupied or unoccupied, shall know exactly where to look for his assessment, and shall thus be more certain to discover any claim made upon him by reason of his interest and be enabled to discharge it before anything shall be lost to him in consequence of a default.⁴

The terms "seated," "resident," and "occupied" lands may not convey precisely the same idea as they are employed in

Manuf. Co. v. Dalrymple, 56 N. J. L. 449; Gordon v. Becker, 71 Hun 282; Stewart v. Flummerfelt, 53 N. J. L. 540.

¹ Where the statute required assessors, before assessing any school-district tax, to determine in which district the lands of persons residing out of the town should be taxed, and to certify their determination to the town clerk, who was to record the same, an assessment to the town without complying with this requirement was invalid, and an inhabitant of the district might avail himself of the defect. The determination, it will be seen, was really as to what should be the limits of the district. Taft v. Wood, 14 Pick. 362. See, also, Rawson v. School Dist., 100 Mass. 134. By statute a town was not to be re-districted oftener than once in ten years "so as to change the taxation

of lands of proprietors." A tax levied in a new district, established in violation of this provision, is void: Gustin v. School Dist., 10 Gray 85. See Holmes v. Baker, 16 Gray 259. "In the absence of express legislative authority school-district officers are without jurisdiction to levy a tax upon real estate not within the limits of their school-district, and a tax so levied, no matter for what purpose, is absolutely void:" Chicago, B. & Q. R. Co. v. Cass County, 51 Neb. 369. A school-district's assuming for more than one year the right to tax a railroad bridge does not conclusively bind the court to a presumption that such bridge is within the limits of the district: Ibid.

² *Ante*, pp. 637, 638.

³ *Ante*, pp. 633, 693-700.

⁴ See Burd v. Ramsey, 9 S. & R. 109; Ritter v. Worth, 58 N. Y. 627.

the several state statutes, and probably do not.¹ They will in general, however, be found sufficiently explained in the several statutes. The general idea of the statutes classifying lands for taxation is, that those which are cultivated or occupied, so that some one within the taxing district is personally in charge and therefore liable for taxation in respect to them, shall be taxed in a list by themselves. There are very essential distinctions, however, to be observed in considering the several statutes. The custom in most of the states is that, when the periodical assessments are made, the lands are examined or their condition inquired into, and they are classed irrespective of any former assessment; while in Pennsylvania the rule is that lands once seated are presumed to continue so, and nothing but an unequivocal abandonment by the occupier, without

¹ As to what are to be regarded as "seated" lands in Pennsylvania, see *Wilson v. Waterson*, 4 Pa. St. 214, in which it is held that lands having a house upon them and some improvements, though not occupied, are not to be regarded as unseated without unequivocal marks of the abandonment of the improvement, and its permissive return to its natural state. The improvement of part of a tract makes the whole seated, though divided by a county line: *Ellis v. Hall*, 19 Pa. St. 292. Where a number of unoccupied tracts are to be used in supplying a mill with timber to cut, this does not make them seated: *Heft v. Gephart*, 65 Pa. St. 510. Lands are seated when occupied, even though the occupant is an intruder: *Campbell v. Wilson*, 1 Watts 503; *Larimer v. McCall*, 4 W. & S. 133. And the occupation and cultivation of part of a warrant fixes the character of the whole: *Biddle v. Noble*, 68 Pa. St. 279. Residence without cultivation, or cultivation without residence, will preclude land being sold as unseated: *George v. Messenger*, 73 Pa. St. 418. As to what will constitute seated lands in general, see *Campbell v. Wilson*, 1 Watts 503; *Shaefer v. McCabe*, 2 Watts 421;

Fish v. Brown, 5 Watts 441; *Kennedy v. Dailey*, 6 Watts 269; *Wallace v. Scott*, 7 W. & S. 247; *Larimer v. McCall*, 4 W. & S. 133; *Mitchell v. Bratton*, 5 W. & S. 451; *Milliken v. Benedict*, 8 Pa. St. 169; *Jackson v. Sassaman*, 29 Pa. St. 106; *Hathaway v. Ellsbree*, 54 Pa. St. 498; *Lackawana Iron, etc. Co. v. Fales*, 55 Pa. St. 90; *Stewart v. Trevor*, 56 Pa. St. 374; *Green v. Watson*, 34 Pa. St. 332; *Hoffman v. Bell*, 61 Pa. St. 444; *George v. Messenger*, 73 Pa. St. 418; *Watson v. Davidson*, 87 Pa. St. 270; *Jackson v. Stoetzel*, 87 Pa. St. 302; *Arthurs v. King*, 95 Pa. St. 167; *Earley v. Euwer*, 102 Pa. St. 338. Whether land is to be taxed as seated or unseated depends altogether upon the appearance it may present to the eye of the assessor. If there appears to be such permanent improvement as indicates a personal responsibility for taxes, the land should be returned and taxed as seated. Occasional occupation by miners and the digging of coal by trespassers do not make it seated: *Stoetzel v. Jackson*, 105 Pa. St. 562. Assessment construed, and held not conclusive that unseated land was included therein: *Everhart v. Nesbitt*, 182 Pa. St. 500.

the intention of returning, will warrant their being changed to the unseated list.¹ And the abandonment of part of an entire tract while the occupation of the remainder continues will not prevent the whole being regarded as seated.² So, again, the general rule is that while the owner or occupant is taxed personally for the land he owns or occupies, the tax is also made a lien upon the land, which will be sold for its satisfaction in case the tax is not collected of the person. In Pennsylvania, on the other hand, while the tax on seated lands is a personal charge, that on the unseated lands alone has until recently been made a lien to be enforced by sale. And even since the recent law which makes seated lands liable to sale for taxes, the proceedings are different, personal notice to the owner being required.³

Under all the statutes, however, the requirement of a classification of lands as seated and unseated, resident or non-resident, etc., is probably to be considered imperative.⁴ It has been so held in Maine,⁵ Massachusetts,⁶ New Hampshire,⁷ New

¹ Harbeson v. Jack, 2 Watts 124; Milliken v. Benedict, 8 Pa. St. 169; Negley v. Breeding, 32 Pa. St. 325; Arthurs v. Smathers, 38 Pa. St. 40, 44; Stewart v. Trevor, 56 Pa. St. 374.

² Patterson v. Blackmore, 9 Watts 104. See Ellis v. Hall, 19 Pa. St. 292.

³ See Broughton v. Journeay, 51 Pa. St. 31; Franklin Coal Co. v. Bertels, 109 Pa. St. 550; Neill v. Lacy, 110 Pa. St. 294; Lovejoy v. Lunt, 48 Me. 377.

⁴ People v. Owyhee Mining Co., 1 Idaho 409. Possibly Connecticut is an exception: see Adams v. Seymour, 30 Conn. 402. Even though the statute requires two principal classes of real property to be given, viz, city, village, or town property, which is divided into lots and blocks, and all other real property, it does not follow that a listing and valuation by subdivided classification, putting city lots and improvements thereon under two different heads, is invalid: Dayton v. Board of Equal., 33 Or. 131. The situation of property, and the uses to which it is put, should determine its classification for pur-

poses of taxation, whether a town or city lot or land, under the revenue law of Illinois: People v. Palmer, 113 Ill. 346.

⁵ The law requiring improved land to be assessed to the owner, an assessment to person unknown was void: Brown v. Veazie, 25 Me. 359; Barker v. Hasseltine, 27 Me. 354. To the same effect are Biddleman v. Brooks, 28 Cal. 74; Daly v. Ah Goon, 64 Cal. 512; Daniel v. Taylor, 33 Fla. 636; Carmichael v. Aiken, 13 La. An. 205. An assessment of a whole lot to a person, and a sale of the whole, is void if a part never was owned or possessed by him: Barker v. Blake, 36 Me. 433; Greene v. Walker, 68 Me. 311. For a case of resident land assessed as non-resident, see Lunt v. Wormell, 19 Me. 100. If non-resident land is given in by a resident agent for assessment to him as agent, it may so be assessed: Williams v. Young, 51 Ga. 463.

⁶ Rising v. Granger, 1 Mass. 48; Desmond v. Babbitt, 117 Mass. 233.

⁷ Bowles v. Clough, 55 N. H. 389;

York,¹ Pennsylvania,² and in so many other states that any question that might once have been an open one must now be regarded as finally settled.³

Assessment of occupied lands. There is a general concurrence of authority that, when the statute provides for the assessment of occupied or seated lands to the owner or occupant, the

Perley v. Stanley, 59 N. H. 587; Thompson v. Ela, 60 N. H. 562. Lands in possession of a tenant in common who is a resident, and does not refuse to be taxed for the whole property, cannot be taxed as non-resident: Randall v. Watson (N. H.), 46 Atl. Rep. 688. Under a statute providing that unimproved lands of non-residents shall be taxed in the owners' name, if known, the selectmen are not required to tax lands in a claimant's name when the owner's is unknown: Lime Rock Nat. Bank v. Henry, 69 N. H. 298. Payment of taxes on non-resident lands is not such conclusive evidence of ownership as to entitle the taxpayer to be treated by the collector as the true owner; but the repeated payment by the true owner of taxes assessed on non-resident lands in a decedent's name is sufficient to warrant a continuance of such assessment: Benton v. Merrill, 68 N. H. 369.

¹ Whitney v. Thomas, 23 N. Y. 281; Crooke v. Andrews, 40 N. Y. 547; Newell v. Wheeler, 48 N. Y. 486; Ritter v. Worth, 58 N. Y. 627; Joslyn v. Rockwell, 128 N. Y. 334; Sanders v. Downs, 141 N. Y. 422. Realty of a foreign corporation having a place of business in New York outside of the taxing district in which such realty is located is taxable as realty of a non-resident: New York Milk Products Co. v. Damon, 57 App. Div. (N. Y.) 261. An assessment of a non-resident's unoccupied lands was not rendered void by the insertion of the owner's name in the assessment roll, such insertion being mere surplus-

age: Collins v. Long Island City, 132 N. Y. 331. And see Butler v. Oswego, 57 Hun 592.

² Milliken v. Benedict, 8 Pa. St. 169. As to the effect of consent to land's being assessed in the wrong list, see Larimer v. McCall, 4 W. & S. 133; Milliken v. Benedict, *supra*; Negley v. Breeding, 32 Pa. St. 325; Hathaway v. Ellsbree, 54 Pa. St. 498. And as to an erroneous listing in general, see Commercial Bank v. Woodside, 14 Pa. St. 404; Stewart v. Trevor, 56 Pa. St. 374. Lands assessed as seated cannot be transferred to the unseated list without notice to the owner where practicable: Larimer v. McCall, 4 W. & S. 133; Milliken v. Benedict, 8 Pa. St. 169; Commercial Bank v. Woodside, 14 Pa. St. 404; Stewart v. Trevor, 56 Pa. St. 374; Bechdle v. Lingle, 66 Pa. St. 38. But if a parcel has been on no list for several years, the owner has no such right: Bechdle v. Lingle, *supra*. Nor generally, it seems, in case of abandonment: Laird v. Hiester, 24 Pa. St. 452.

³ See Washington v. Pratt, 8 Wheat. 681; Messenger v. Germain, 6 Ill. 631; Raynor v. Lee, 20 Mich. 384; Burroughs v. Goff, 64 Mich. 464; Seymour v. Peters, 67 Mich. 415; Hill v. Warrell, 87 Mich. 135; Fowler v. Campbell, 100 Mich. 398; Green v. Craft, 28 Miss. 70; Milwaukee Iron Co. v. Hubbard, 29 Wis. 51, 56. Where the land is required to be assessed to the patentee when the owner is unknown, any other assessment is invalid: Yenda v. Wheeler, 9 Tex. 408; Thompson v. Ela, 60 N. H. 562. An assessment is void if, no name of any

requirement that it shall be so assessed is imperative.¹ Such an assessment is intended to establish a personal liability, and it is very manifest that assessors can have no power to charge one class of persons when the statute specifies a different class for the purpose. Thus, if the statute says the *owners* shall be assessed, the assessors cannot lawfully charge *occupants* who are not owners,² though, if the statute only requires the assess-

owner or occupant being given, the land is not assessed as "unknown" as required by law: *McKeown v. Collins*, 38 Fla. 276. A statute requiring lands to be assessed to "unknown owner," if there is no occupant or known owner, is mandatory: *Bird v. Benlisa*, 142 U. S. 664. The assessment of a non-resident's unoccupied land in the name of a person not the owner, held void: *Baer v. Choir*, 7 Wash. 631. Putting to an assessment of non-resident lands the name of a former owner, held immaterial: *Alvord v. Collin*, 20 Pick. 418. See *Miller v. Hale*, 26 Pa. St. 432; *Philadelphia v. Miller*, 49 Pa. St. 440; *O'Grady v. Barnhisel*, 23 Cal. 287; *O'Neal v. Virginia, etc. Co.*, 18 Md. 1. In Louisiana vacant property may be assessed in the name of its deceased non-resident owner if it still belongs to his estate: *Sewell v. Watson*, 31 La. An. 589. But if it never belonged to him the assessment is void: *Fix v. Dierker's Succession*, 30 La. An. 175. If one is owner when proceedings are commenced, an assessment to him is not rendered invalid by a change in ownership, of which the assessors have no notice, before such proceedings are confirmed: *Morange v. Mix*, 44 N. Y. 315.

¹*Northern Pac. R. Co. v. Galvin*, 85 Fed. Rep. 811; *Martin v. Southern Athletic Club*, 48 La. An. 1051; *Burroughs v. Goff*, 64 Mich. 464; *State v. Thompson*, 149 Mo. 441; *Perham v. Haverhill Fibre Co.*, 64 N. H. 2; *Burpee v. Russell*, 64 N. H. 62; *Vestal v. Morris*, 11 Wash. 451. A statute re-

quiring lands to be assessed to the owner or occupant, or, if there is no occupant or known owner, to "unknown owner," is mandatory: *Bird v. Benlisa*, 142 U. S. 664. See, to the same effect, *Weinreich v. Hensley*, 121 Cal. 647, and cases cited there; *Sweigle v. Gates*, 9 N. D. 538. An assessment of occupied land as "unknown," under a statute which only authorizes "unoccupied land if the owner is unknown," to be assessed "without inserting the name of any person," is void: *Daniel v. Taylor*, 33 Fla. 636. Land need not be assessed to any particular person unless the statute requires it: *Thompson v. Carroll's Lessee*, 22 How. 422; *Witherspoon v. Duncan*, 4 Wall. 210, 219. See *Haight v. New York*, 99 N. Y. 280; *Wells v. Austin*, 59 Vt. 157. A duly made assessment of taxes to the owner is not invalidated by the omission of the owner's name in transcribing the tax into the tax-list: *Parker v. Cochran*, 64 Iowa 757.

²*Mansfield v. Martin*, 3 Mass. 419. But the assessment of a company's lands to one member who was in possession as agent was held sufficient, and the addition of "agent" to his name was treated as surplusage: *Wells v. Battelle*, 11 Mass. 477. See further, *Kelsey v. Abbott*, 13 Cal. 609; *Coombs v. Warren*, 34 Me. 89; *Abbott v. Lindenbower*, 42 Mo. 162, 46 Mo. 291; *Hume v. Wainscott*, 46 Mo. 145; *Cardigan v. Page*, 6 N. H. 182; *Ainsworth v. Dean*, 21 N. H. 400; *Johnson v. McIntyre*, 1 Bibb 295; *Knox v. Huidekoper*, 21 Wis. 527.

ors to list in the names of the owners respectively, *if known*, if they omit the name in the list, or set down the lands as belonging to persons unknown, the presumption that they performed their duty in endeavoring to ascertain the owner may support the assessment until evidence that the officers did know the owner overcomes this presumption.¹

The sale of an individual's land assessed as state land is void: *Redmond v. Banks*, 60 Miss. 293.

¹ *Stockton v. Dunham*, 59 Cal. 608; *Hewes v. McLellan*, 80 Cal. 393; *Merritt v. Thompson*, 13 Ill. 716; *White v. Alton*, 149 Ill. 626; *Corning Town Co. v. Davis*, 44 Iowa 622; *Brown v. Veazie*, 25 Me. 359; *Shimmin v. Inman*, 26 Me. 228; *Cardigan v. Page*, 6 N. H. 182; *Nelson v. Pierce*, 6 N. H. 194; *Smith v. Messer*, 17 N. H. 420; *Ainsworth v. Dean*, 21 N. H. 400; *Jaquith v. Putney*, 48 N. H. 138. In *Corning Town Co. v. Davis*, *supra*, such an assessment is said to be a mere irregularity. An assessment against lands described as belonging to persons who appeared as the owners in the last tax duplicate, held valid as against the actual owner: *Reed v. Kalfsbeck*, 147 Ind. 148. Land is properly assessed to the person shown by the records to have the title: *State Trust Co. v. Chehalis County*, 79 Fed. Rep. 282; *Hartford v. Hartford Theo. Sem.*, 66 Conn. 475; *Gee v. Clark*, 42 La. An. 918; *Palmer v. Board of Assessors*, 42 La. An. 1122; *Butler v. Stark*, 139 Mass. 19; *Loud & Sons Lumber Co. v. Hagar*, 118 Mich. 452; *Douglas Co. v. Commonwealth*, 97 Va. 397. To ascertain, for assessment, the ownership of land, the officer may resort to the duly-certified copy of entries made on the books of any register of a federal land office on file in the county: *Nolan v. Taylor*, 131 Mo. 224. Where the selectmen have no knowledge of a change in ownership, land is properly assessed by them to the

former owner, if at the time of the assessment they believe him to be the owner: *Langley v. Batchelder*, 69 N. H. 566. The statute requiring the assessment list to give the names, if known, of non-resident owners, does not require selectmen to determine conflicting questions of ownership, or to incur risk of a mistake. In case of reasonable doubt land may be taxed in unknown owner's name: *French v. Spalding*, 61 N. H. 395. In Louisiana land cannot be assessed as "unknown" without an honest endeavor first to ascertain the owner: *Rapp v. Lowry*, 30 La. An. 1272. See *Person v. O'Neal*, 28 La. An. 228. So in Alabama: 58 Ala. 46. An assessor finding a person in quiet possession of property as owner under title from a judicial sale may assess it in such person's name without examining court records to test the validity thereof: *Mason v. Bemis*, 38 La. An. 935. Where it appears that in previous years property had not been assessed to any one, and the assessor is unable to obtain from the records of conveyances, or by inquiry of the adjacent owners, the name of the proprietor, it is permissible to list the land as that of an unknown owner: *Robinson v. Williams*, 45 La. An. 485. The statute providing that the assessment should show "the owner of each lot (if known to the superintendent), if unknown, the word 'unknown' shall be written opposite the number of the lot," etc., it was held that when the assessment was returned with the word "unknown," thus placed,

Care should be taken that the name given in the list¹ be the correct one; for any misleading error would be fatal,² unless,

"it amounted to an official certificate, by the proper officer, that in point of fact the owner of the particular lot designated was unknown to him," and this was conclusive of the fact certified, and could not be called collaterally in question in an action brought to recover the tax: *Chambers v. Satterlee*, 40 Cal. 497, 518. For further decisions in California, see *Grotefend v. Ultz*, 53 Cal. 666; *Grimm v. O'Donnell*, 54 Cal. 522; *Hearst v. Egglestone*, 55 Cal. 365; *Brady v. Dowden*, 59 Cal. 51; *Hall v. Theisen*, 61 Cal. 524; *San Francisco v. Phelan*, 61 Cal. 617; *Bosworth v. Webster*, 64 Cal. 1; *Weinreich v. Heusley*, 121 Cal. 647. Although in a proper case land may be assessed to "owner unknown," yet if it be so assessed, and at the same time be assessed to the owner by name, the assessment is void: *Nichols v. McGlathery*, 43 Iowa 189. Where, under the heading "owners' names" in an assessment book, spaces were left blank, it was held that assessments must be deemed made to unknown owners: *Burdick v. Connell*, 69 Iowa 458. Ditto marks under the word "unknown" in the column in the assessment roll headed "In whose name assessed," held a sufficient statement that the owner's name is unknown: *Hoyt v. Clark*, 64 Minn. 139.

¹That where land required to be assessed to the owner or occupant is assessed to another the proceedings are void, see *Bird v. Benlisa*, 142 U.

S. 664; *Rich v. Braxton*, 158 U. S. 375; *Tracy v. Reed*, 38 Fed. Rep. 69; *New Orleans, M. & T. R. Co. v. Negrotto*, 40 Fed. Rep. 428; *Morse v. South*, 80 Fed. Rep. 206; *Flanagan v. Dunne*, 105 Fed. Rep. 828; *Crook v. Anniston City L. Co.*, 93 Ala. 4; *Kelsey v. Abbott*, 13 Cal. 609; *Bidleman v. Brooks*, 28 Cal. 72; *Himmelman v. Steiner*, 38 Cal. 175; *People v. Castro*, 39 Cal. 65; *L'Engle v. Florida Central, etc. R. Co.*, 21 Fla. 353; *Stackpole v. Hancock*, 40 Fla. 362; *Wheeler v. Bramel* (Ky.), 8 S. W. Rep. 199; *Williams v. Landry*, 47 La. An. 5; *Lockhart v. Smith*, 47 La. An. 121; *Dunn v. Winston*, 31 Miss. 135; *Abbott v. Lindembower*, 42 Mo. 162; *Hume v. Wainscott*, 46 Mo. 145; *Zink v. McManus*, 49 Hun 583; *Parsons v. Parker*, 80 Hun 281; *Brundred v. Egbert*, 158 Pa. St. 552; *Yenda v. Wheeler*, 9 Tex. 408; *Cunningham v. Brown*, 39 W. Va. 588; *Hecht v. Boughton*, 2 Wyo. 368. Assessment and sale of land in name of firm of which owner was a member, held void: *Ferguson v. Clark* (Ky.), 52 S. W. Rep. 964. Assessment on land owned by a member of a firm in accordance with instructions given to township treasurer by firm's agent, sustained as against firm: *Sage v. Burlingame*, 74 Mich. 120. Where agent of record owners of land returned assessment list of such land in his own name as agent, without naming his principals, and land was set in agent's list, no lien for taxes was acquired which could be foreclosed against record

²*People v. Whipple*, 47 Cal. 591; *Pearson v. Creed*, 69 Cal. 538; *Emeric v. Alvarado*, 90 Cal. 444; *Smith v. Reed*, 51 Conn. 10. Mistakes in names will not vitiate if not calculated to mislead: *Kendig v. Knight*, 60 Iowa 29; *Masonic Building Assoc. v. Brown-*

ell, 164 Mass. 306; *Loud & Sons Lumber Co. v. Wagar*, 118 Mich. 452; *Nolan v. Taylor*, 131 Mo. 224; *Pierce v. Richardson*, 37 N. H. 306; *Van Voorhis v. Budd*, 39 Barb. 479; *Felker v. New Whatcom*, 16 Wash. 178.

as is frequently the case, there is statutory provision that mistake in designating the owner shall not invalidate an assessment.¹ Where land is required to be assessed to the owner, assessment to an occupant who holds the legal title, but has given a trust-deed as security, is proper.² An assessment to a mortgagee is invalid.³ So is an assessment to one who has conveyed the land, but who buys it back after the assessment day, the deed given by him being destroyed, unrecorded, to revest the title.⁴ Where one is in possession of land under a parol gift

owners: *Meyer v. Trubee*, 59 Conn. 422. Where land is to be assessed to the occupant, an assessment to a company when it is owned by an individual and occupied by his agent is void: *Hearst v. Egglestone*, 55 Cal. 365. If the land is without buildings, and only used as a garden, an assessment to the owner may be sustained: *Massing v. Ames*, 37 Wis. 645. An assessment to "S. B. Q. Mining Co. F. Agent," is an assessment to the company: *Lake County v. Sulphur Bank Quicksilver Mining Co.*, 68 Cal. 14. Under the present statutes of many states an assessment is not void because not made in the owner's name, or because made in the name of a person other than the owner, if the land is in other respects sufficiently described: *Merrick v. Hutt*, 15 Ark. 331; *Kinsworthy v. Mitchell*, 21 Ark. 145; *Garibaldi v. Jenkins*, 27 Ark. 453, 456; *Landregan v. Peppin*, 86 Cal. 122; *Cooper v. Jackson*, 71 Md. 244; *Stilz v. Indianapolis*, 81 Md. 582; *Schrodt v. Deputy*, 88 Ind. 90; *Peckham v. Mullikan*, 99 Ind. 352; *Hill v. Graham*, 72 Mich. 659; *Auditor-General v. Keweenaw Assoc.*, 107 Mich. 405; *Iron Star Co. v. Wehse*, 117 Mich. 487; *Abbott v. Lindenbower*, 42 Mo. 162, 46 Mo. 291; *Hume v. Wainscott*, 46 Mo. 145; *State v. Hurt*, 113 Mo. 90. Under the Montana statute the listing of land in the name of a person other than the owner is but an irregularity or informality, which of itself does not avoid the assessment: *Cobban v.*

Hinds, 23 Mont. 338. That land benefited by improvements was assessed in the name of the former owners will not defeat the assessment where it does not appear that any one was prejudiced thereby: *Masonic Building Assoc. v. Brownell*, 164 Mass. 306. In Illinois the listing of a railroad right of way to the railroad company, when it was in the possession of the construction company, was sustained: *Union Trust Co. v. Weber*, 96 Ill. 346.

¹ See *Del Castillo v. De McConnico*, 168 U. S. 674; *Pearson v. Creed*, 69 Cal. 538; *Landregan v. Peppin*, 86 Cal. 122; *Cohen v. Alameda*, 124 Cal. 504; *Gratwick, etc. Lumber Co. v. Oscoda*, 97 Mich. 221. See also, *ante*, p. 525. An assessment to a married woman in her maiden name has been upheld: *Lavergne v. New Orleans*, 28 La. An. 677. Where property bought by a woman divorced with legal right to resume her original name was recorded under that name, the assessment of it under her former name as a married woman could not be the basis of a legal tax-title: *Maspereau v. New Orleans*, 38 La. An. 400.

² *Greenwalt v. Tucker*, 8 Fed. Rep. 792.

³ *Flanagan v. Dunne*, 105 Fed. Rep. 828. In New Hampshire a mortgagee in possession is not bound to pay taxes: *Eastman v. Thayer*, 60 N. H. 408.

⁴ *Pitkin v. Parks*, 54 Vt. 301.

it should be assessed to the donor who is still the legal owner.¹ One who owns the fee, rather than one who owns an easement to which it is subject, is liable for taxes thereon.² And where a grantor retains no beneficial interest in the land conveyed, his only authority being to enter upon it for a special purpose, an assessment to him is erroneous.³

By the owner of property for the purpose of assessment is meant the legal, and not the equitable, owner;⁴ therefore trustees having the legal title are properly assessed;⁵ and where land is sold by executory contract it is rightly assessed to the vendor until the vendee becomes entitled to a conveyance.⁶ The lessor of real estate is the "owner" thereof within a statute declaring that all property shall be assessed in the owner's name.⁷ It has been decided in Massachusetts

¹ Mullikin v. Reeves, 71 Ind. 281.

² Winston v. Johnson, 42 Minn. 398.

³ State v. Newark, 50 N. J. L. 66.

⁴ Tracy v. Reed, 38 Fed. Rep. 69; People v. Seaman's Friend Soc., 87 Ill. 246.

⁵ Richardson v. Boston, 148 Mass. 508; St. Louis v. Wencker, 145 Mo. 230. See Collins v. Boring, 96 Ga. 360. Where an assignee in bankruptcy held the record title to land, it was proper to assess such land in his name: Fish v. Genett (Ky.), 56 S. W. Rep. 813.

⁶ Sherwin v. Mudge, 127 Mass. 547. See Tracy v. Reed, 38 Fed. Rep. 69. In Iowa, if a vendee by contract has paid part of the price he should be taxed for the land and the vendor for the money due: Meyer v. Dubuque County, 49 Iowa 193. Compare Willey v. Koons, 49 Ind. 272; Henderson v. State, 53 Ind. 60. Land may be treated as belonging either to the maker or the holder of a bond for title, when the latter is in possession: National Bank v. Danforth, 80 Ga. 55. One whose offer to purchase real estate had not been accepted was not an equitable owner thereof so as to authorize the assessment against him of a tax on the property: Fish v.

Coggeshall, 22 R. I. 318. Property bought with borrowed money is to be considered the purchaser's property though the lender holds a lien upon it for the money due: Lyle v. Jacques, 101 Ill. 644.

⁷ East Tennessee, V. & G. R. Co. v. Morristown (Tenn. Ch. App.), 35 S. W. Rep. 771. The general rule, where the lease is silent upon the subject, imposes upon the lessor the obligation to pay the taxes upon the leased land: People v. Barker, 153 N. Y. 98. A lease in perpetuity, containing a clause of defeasance in case of the lessee's failure to comply with its terms, does not constitute the lessee the owner of the premises for the purposes of taxation: State v. Mississippi River Bridge Co., 134 Mo. 321. As against a town, agreements of tenants with their landlord to pay taxes are inoperative, and the property is assessable to the latter: Yale Univ. v. New Haven, 71 Conn. 316. Where a camp-meeting association conveyed by instruments in the form of leases to lessees, their heirs and assigns, lots forfeitable on certain conditions, the lessees took a lease fee, and buildings erected by them on lots were taxable to them and not

that one who buys land at a tax-sale and has his deed recorded is "the person appearing of record as owner," to whom the land should be taxed, notwithstanding a right of redemption still remains;¹ but an assessment to persons claiming under a void tax-deed is nugatory.²

If land is held by two or more as tenants in common, it should either be assessed to all jointly, or undivided interests assessed to the owners severally; they cannot be assessed for distinct quantities.³ A life-tenant should be assessed as owner during the continuance of the life-estate.⁴ If the husband has

to the association: *Camp Meeting Assoc. v. East Lyme*, 54 Conn. 152. A railroad company which has acquired from a city the right to the perpetual possession of certain land, and which is in the actual occupancy thereof, is liable for the taxes thereon, though it does not own the title to the fee: *Muscatine v. Chicago, R. I. & P. R. Co.*, 79 Iowa 645. As to the construction of the Texas statute providing that property held under a lease for a term of three years or more, belonging to the state, or exempt by law from taxation in the owner's hands, shall be considered, for all purposes of taxation, as the property of the lessee, see *State v. Taylor*, 72 Tex. 297; *Trammell v. Faught*, 74 Tex. 557.

¹ *Butler v. Stark*, 139 Mass. 19. A tax-title fair on its face, and suffered to remain unquestioned on the record of deeds, is a sufficient basis for an assessment, whether the title is valid or not: *Augusti v. Citizens' Bank*, 46 La. An. 529. The assessment of taxes against the adjudicatee of confiscated property, during his tenure thereof, is valid: *Brent v. New Orleans*, 41 La. An. 1098. It has been held in California that one in possession of lands after his title has been cut off by a tax-sale is not taxable for the land: *Maina v. Elliott*, 51 Cal. 8. Whether, under the Michigan tax-law, lands bid off to

the state for delinquent taxes, and still held by the state, could be assessed to the person who, but for such sale, would be the legal owner, *quære*: *Hinds v. Belvidere T'p*, 107 Mich. 664.

² *McWilliams v. Michel*, 43 La. An. 984.

³ See *Hayes v. Victor*, 33 La. An. 1162; *National Bank v. Licking Valley, etc. Co. (Ky.)*, 22 S. W. Rep. 881; *Morgan v. Smith*, 70 Tex. 637. An assessment in a joint owner's name, with words indicating the other joint owners, held not invalid: *Hood v. New Orleans*, 49 La. An. 1461. An assessment to one of two tenants in common was sustained in *Fleischauer v. Hoboken*, 40 N. J. L. 109. But under the California code where an assessment had been made against only one of two owners, the judgment for the enforcement thereof was not binding on the other owner: *Weinreich v. Hensley*, 121 Cal. 647. It is proper to assess partnership lands to the partnership instead of to the individual partners: *Hubbard v. Winsor*, 15 Mich. 146.

⁴ *White v. Portland*, 67 Conn. 273; *Garland v. Garland*, 73 Me. 97; *Mayor v. Boyd*, 64 Md. 10; *Bates v. Sharon*, 175 Mass. 293; *De Raesines v. De Raismes*, 72 N. Y. 154; *Sidenburg v. Ely*, 90 N. Y. 257; *Anderson v. Hensley*, 8 Heisk. 834; *Ferguson v. Quinn*, 97 Tenn. 46; *Wilmot v.*

the care and occupancy of the wife's land, it may be assessed to him as occupant.¹ Where a statute provides for the assessment of the estates of deceased persons to heirs or devisees without specifying names until they give notice of its division, an assessment to heirs is bad where the property has vested in devisees.² In some states an assessment of the lands of a de-

Lathrop, 67 Vt. 671. As to apportionment between tenants for life and the remaindermen of assessments for permanent improvements, see *post*, ch. XIV.

¹ Paul v. Fries, 18 Fla. 573; Southworth v. Edmands, 152 Mass. 203; Mas-sing v. Ames, 37 Wis. 645; Enos v. Bemis, 61 Wis. 656. In an earlier Wisconsin case an assessment of the wife's separate estate to her husband, he living with her upon it, was void under a statute requiring lands to be assessed to the owner or occupant: Hamilton v. Fond du Lac, 25 Wis. 496. Where husband and wife do not live together, and he does not occupy the land, such an assessment would be void: Smith v. Reed, 51 Conn. 10. A wife is not estopped from denying the validity of an assessment to her husband of her land by the fact that her husband, as her agent, annually sent for and paid the tax-bills, and never informed the assessors that the land had been conveyed to her: Parsons v. Parker, 80 Hun 281, 30 N. Y. Supp. 134. An assessment to the husband alone for street grading on the community property of himself and wife held sufficient where she was made a party to the suit to foreclose the lien: Elma v. Carney, 4 Wash. 418. An assessment of community property to the wife alone was held void, and a sale thereof under a decree in an action against her to foreclose the lien of the assessment did not affect the husband's title: Gwynn v. Dierssen, 101 Cal. 563. A tax upon a wife's realty and personalty was held not illegal because such property was set in the grand list in the name

of the husband and wife; such error being harmless: Adams v. Sleeper, 64 Vt. 544. That land belonging to a mother and her son was, upon a listing by the son, listed in the name of the father, the head of the family, was held not ground for enjoining the collection of the tax: Ryan v. Central City (Ky.), 54 S. W. Rep. 2.

² Elliott v. Spinney, 69 Me. 31; Tobin v. Gillespie, 152 Mass. 219. In Kansas, where land descends at once to the heir, the administrator is not bound to pay taxes upon it unless he proceeds to sell it: Reading v. Wier, 29 Kan. 429. An assessment to an heir as owner of the whole property will be upheld as to his interest in the succession: Marti v. Wall, 51 La. An. 946. An assessment for public improvements on land, as that of the owner's heirs, although it had in fact been sold to sundry purchasers by the heirs, is valid, and collection will not be enjoined at the instance of the purchasers: Murphey v. Wilmington, 5 Del. Ch. 281. Listing of an estate's land to decedent's "widow and heirs," was held sufficient in Wheeler v. Anthony, 10 Wend. 346. Assessment of a decedent's land to the widow alone held not legal: Yancey v. Hopkins, 1 Munf. 419; Lynde v. Brown, 143 Mass. 337; Kerslake v. Cummings (Mass.), 61 N. E. Rep. 760. Where the land of a decedent is listed in his widow's name for taxation, though he left heirs to whom the land descended, a tax-sale of the land conveys only the widow's dower: Payne v. Arthur (Ky.), 29 S. W. Rep. 860. An assessment in the wife's name, after the dissolution of

cedent to his estate is valid,¹ while in others it is held to be void.² An assessment of land in the name of a deceased owner is in general void unless authorized by statute.³

Separate assessment of parcels. It is also generally made imperative that separate and distinct parcels of land shall be assessed separately. This is certainly essential where the lands are resident or seated, and in the occupancy of different persons, each of whom has a right to know exactly what demand the government makes upon him.⁴ A failure to observe this requirement is not a mere "omission, defect, or irregular-

the community by the death of her husband, was held valid as against the widow and her heirs: *Le Leigneux v. Bessan*, 52 La. An. 187. The same case holds that where lands were assessed in a husband's name while he was the head of the community, the filing of a delinquent tax-list containing his name divested the community of title, though he had died previous to the filing.

¹ *Moale v. Baltimore*, 61 Md. 224; *Dickison v. Reynolds*, 48 Mich. 158; *State v. Jersey City*, 24 N. J. L. 108. Where a person has died, and the heirs have not been put in possession of his property, an assignment of the succession to his estate is sufficient: *Surget v. Newman*, 43 La. An. 873.

² *Jackson v. King*, 82 Ala. 432; *L'Engle v. Wilson*, 21 Fla. 461; *Territory v. Perea* (N. M.), 62 Pac. Rep. 1094; *Trowbridge v. Horan*, 78 N. Y. 439; *McCue v. Board of Supervisors*, 162 N. Y. 235; *People v. Valentine*, 5 App. Div. 520; *Morrison v. McLaughlin*, 88 N. C. 251. Under the Michigan tax-law of 1889 an assessment of land to a decedent's estate after administration and the discharge of the executors, instead of to the devisees, whose names were easily ascertainable, was erroneous: *Fowler v. Campbell*, 100 Mich. 398. See, further, *Reading v. Wier*, 29 Kan. 429; *Norres v. Hayes*, 44 La. An. 907.

³ *Scott v. Brown*, 106 Ala. 604; *Pearson v. Creed*, 69 Cal. 538; *Stafford v. Twitchell*, 33 La. An. 520; *Kerns v. Collins*, 40 La. An. 453; *Edwards v. Fairex*, 47 La. An. 170; *Walsh v. Harang*, 48 La. An. 985; *Cucullu v. Brakenridge Lumber Co.*, 49 La. An. 1445; *Millaudon v. Gallagher*, 104 La. 713; *Sawyer v. Mackie*, 149 Mass. 269; *Burpee v. Russell*, 64 N. H. 62; *State v. Tavenner* (W. Va.), 39 S. E. Rep. 649. An assessment for taxes in the assessment year of the owner's death, and *in fieri* when he died, was held to bind his heirs: *Clifford v. Michiner*, 49 La. An. 1511. Under the Louisiana statute of 1900 property can be taxed in the name of the person appearing on the register to be the owner, whether he is dead or alive; and unless the actual owner notifies the assessors of the former owner's death, and otherwise complies with the law, he cannot complain of an assessment in the wrong name. or of errors in description: *Geddes v. Cunningham*, 104 La. 306. Under the Nebraska statute the name of the person against whom the property is listed, or the sale is made, is immaterial, and therefore an assessment of land in a decedent's name is not invalid: *Grant v. Bartholemew*, 58 Neb. 839.

⁴ *People v. Shimmings*, 42 Cal. 121; *McKeown v. Collins*, 38 Fla. 276; *Roby v. Chicago*, 48 Ill. 130; *Board-*

ity," which can be overlooked, under a statute which provides that assessments for taxation shall be valid "notwithstanding any omission, defect, or irregularity" in the proceedings.¹ The like separate assessment is also essential in other cases if the statute requires it. The reasons are sufficiently manifest. If separate parcels of land belonging to different individuals, and presumably of different values, can be assessed together, neither of the owners has any means of determining the amount of tax which is properly chargeable to his property, and consequently no means of discharging his own land from the lien, and of protecting his title, except by paying the whole of a demand some undefined and undefinable portion of which is neither in equity nor in law a proper charge against him.² Nay, when the two parcels are owned by the same person, if the

man v. Bourne, 20 Iowa 135; Ware v. Thompson, 29 Iowa 65; Howcott v. Board of Com'rs, 46 La. An. 322; Barker v. Blake, 36 Me. 433; Greene v. Walker, 63 Me. 311; Spiech v. Tierney, 56 Neb. 514; State v. Williston, 20 Wis. 228. The owner of tax-sale certificates on part of the lots in a plat has such an interest as entitles him to insist on the assessor's entering the lots separately on the assessment roll: Neu v. Voegel, 96 Wis. 489.

¹ Roberts v. First Nat. Bank, 8 N. D. 504; Hamilton v. Fond du Lac, 25 Wis. 490. Compare Sargeant v. Bean, 7 Gray 125; Strode v. Washer, 17 Or. 50; Title Trust Co. v. Aylesworth (Or.), 66 Pac. Rep. 276; Stewart v. Schoenfelt, 13 S. & R. 360; Bratton v. Mitchell, 1 W. & S. 310; Mitchell v. Bratton, 5 W. & S. 451; Russell v. Werntz, 24 Pa. St. 337; Miller v. Hale, 26 Pa. St. 432; McReynolds v. Longenberger, 57 Pa. St. 13; Dietrich v. Mason, 57 Pa. St. 40; Rogers v. Johnson, 67 Pa. St. 43.

² See Terrill v. Groves, 18 Cal. 149; Howe v. People, 86 Ill. 288; Shimmin v. Inman, 26 Me. 228; Barker v. Blake, 36 Me. 433; Haywood v. Foster, 13 Pick. 492; Jennings v. Collins, 99 Mass. 29; Cooley v. Waterman, 16

Mich. 466; Hanscom v. Hinman, 30 Mich. 419; Farnham v. Jones, 32 Minn. 7; Dunn v. Winston, 31 Miss. 135; Roberts v. First Nat. Bank, 8 N. D. 504; Willey v. Scoville's Lessee, 9 Ohio 44; Douglass v. Dangerfield, 10 Ohio 152, 156; Strode v. Washer, 17 Or. 50; Title Trust Co. v. Aylesworth (Or.), 66 Pac. Rep. 276; McLaughlin v. Kain, 45 Pa. St. 113; Crane v. Janesville, 20 Wis. 305; Orton v. Noonan, 25 Wis. 672, 677; Siegel v. Outagamie County, 26 Wis. 70. Land-owner's omission to appeal could not validate such an assessment: Lyman v. People, 2 Ill. App. 289. Where land has been regularly platted into city lots, an assessment by the acre as before is bad: Bruce v. McBee, 23 Kan. 379; Hapgood v. Morton, 28 Kan. 764. What is a sufficient plat when property is described with reference to it, see People v. Root, 107 Ill. 581. As to what is a "lot" within the meaning of a tax-law, see Muller v. Bayonne, 55 N. J. L. 102; Potter v. Orange, 62 N. J. L. 192. An assessment is not invalid because on part instead of the entire parcel of land: State v. Essex Public Road Board, 46 N. J. L. 126.

statute requires a separate assessment, obedience to the requirement is essential to the validity of the proceedings. It cannot be held in any case that it is unimportant to the taxpayer whether this requirement is complied with or not. Indeed it is made solely for his benefit; it being wholly immaterial, so far as the interest of the state is concerned, whether separate estates are or are not separately assessed. And where a requirement has for its sole object the benefit of the taxpayer, the necessity for a compliance with it cannot be made to depend upon the circumstances of a particular case, and the opinion of a court or jury regarding the importance of obedience to it in that instance. That method of construing statutes would abolish all certainty.¹

¹ French v. Edwards, 13 Wall. 506, 511; Walker v. Chapman, 22 Ala. 116; Cadwallader v. Nash, 73 Cal. 43; Parker v. Jacksonville, 37 Fla. 342; McKeown v. Collins, 38 Fla. 276; Martin v. Cole, 38 Iowa 141, 153; Challis v. Hekelnkemper, 14 Kan. 474; Nason v. Ricker, 63 Me. 381; Allegany County Com'rs v. Mining Co., 61 Md. 545; Sandwich v. Fish, 2 Gray 298, 301; French v. Whittlesey, 62 N. Y. St. Rep. 117, 30 N. Y. Supp. 363; Frazier v. Prince, 8 Okl. 253; Insurance Co. v. Yard, 17 Pa. St. 331, 338; Young v. Joslin, 13 R. I. 675; Evans v. Newell, 18 R. I. 38; Taylor v. Narragansett Pier Co., 19 R. I. 123; Neu v. Voegel, 96 Wis. 489. An assessment of land as an entire tract, where it was returned in separate parcels, some of which were not taxable, is invalid: St. Mary's Church v. Tripp, 14 R. I. 307; Mowry v. Slaterville Mills, 20 R. I. 94. It makes no difference that the aggregate tax of an owner of land is not increased by the grouping: Allegany County Com'rs v. Mining Co., *supra*. A non-resident parcel which never has been subdivided cannot be assessed for taxation in parcels: Thompson v. Burhans, 61 N. Y. 52. The grouping of two or more parcels owned by the

same person was held, in Russell v. Werntz, 24 Pa. St. 337, to be an irregularity merely, and therefore cured under a statute which provided that "no irregularity in the assessment, or in the process or otherwise, shall be construed or taken to affect the title of the purchaser, but the same shall be declared to be good and legal." But this would not validate the assessment of unseated land on the seated list, and then transferring it to the unseated without notice: Mulliken v. Benedict, 8 Pa. St. 169. In an action by a city to recover taxes it is no defense that an appraisal was made in gross of three separate and non-contiguous lots, instead of a separate appraisal for each lot: Rockland v. Ulmer, 84 Me. 503. That land was taxed as a whole instead of in parcels, held not shown: Cornoy v. Wetmore, 92 Iowa 100. It was held in Maxwell v. Cunningham (W. Va.), 40 S. E. Rep. 499, that the owner of contiguous tracts should have them assessed as a whole, and not in different parcels. So in Co-operative Savings & L. Assoc. v. Green (Idaho), 51 Pac. Rep. 770, it was declared that two contiguous town lots owned by the same person might be assessed jointly. And in Bemis

What are separate parcels. Assessors are sometimes embarrassed by the necessity for determining what is to be regarded a separate parcel for the purposes of taxation. "A dwelling-house with the land and appurtenances occupied with it, a warehouse so occupied, a farm or other parcel of real estate let to the same tenant by one and the same lease, parcels detached from each other and used and occupied for different purposes, may respectively be regarded as separate and distinct estates. When this can be done, they must be deemed to be separate and distinct estates, to be distinctly valued and assessed."¹ But in the case of unimproved lands the general understanding appears to be that an assessment as one parcel of that which was purchased by the owner as such is sufficient, though by the government survey it was subdivided, for the purpose of being offered for sale, into several parcels, each of which might have been sold separately. Thus, an assessment of the whole south half of a section has been held good, though it contained four distinct eighty-acre lots.² This is on the assumption that the whole is still owned as one parcel,³ or at least

v. Caldwell, 143 Mass. 299, it was held that although owners of a lot have divided it, it may be assessed as one lot if the description is such that the owners could not be misled.

¹ *Shaw*, Ch. J., in *Hayden v. Foster*, 13 Pick. 492, 497. Where land is divided into blocks and parts of blocks, and grouped for assessment in the same manner, each block is a separate parcel: *State v. Baldwin Univ.*, 97 Tenn. 358. Where certain land which had formerly comprised one lot appeared on the ward map, after a change thereof, as two lots, an assessment of such lots in gross was void: *May v. Traphagen*, 139 N. Y. 478.

² *Atkins v. Hinman*, 2 Gilm. 437, 443. And see *Spellman v. Curtenius*, 12 Ill. 409, where the two halves of a half section were separately described but assessed together. The assessment and sale of a quarter section as a whole were sustained in *Land & R. Imp. Co. v. Bardon*, 45

Fed. Rep. 706. So as to an entire section, *Martin v. Cole*, 38 Iowa, 141. There is a good deal of discussion in this case as to what is to be regarded as a separate parcel for the purpose of assessment and sale. In *Lower Kings River Reclamation Dist. v. McCullah*, 124 Cal. 175, the statute was held not to require lands assessed for reclamation to be described in the smallest legal subdivisions under the governmental survey.

³ In *Jennings v. Collins*, 99 Mass. 29, 31, several lots were assessed together to one Packard, who was owner of a part of them only. *Wells*, J., says: "If the lots had all been the property of Packard at the time the tax was laid, the mere fact that he had divided the land into small lots for the purposes of sale would not require the assessors to make a separate valuation of each lot. But where lands are separated, either by the use or purpose to which they are devoted, or by the mode of their occupation,

that it is not known to the assessors to have been divided by sale. But an assessment which divides such a parcel into the lowest legal subdivisions cannot prejudice the owner where the land is unoccupied and unimproved,¹ and would seem to be unobjectionable. The authorities in general are imperative in holding that an unauthorized division of a tract in the assessment, which tract has no known legal subdivisions, is as fatal as an unauthorized grouping of distinct parcels would be.²

or are disconnected in location, a tax laid generally upon an entire valuation cannot be made a lien upon each separate parcel, even when they are all owned and occupied by the same person." In California the decisions are that blocks of land in a city may be assessed by blocks when assessed to the owner, even if they had been subdivided into lots: *People v. Culverwell*, 44 Cal. 620; *People v. Morse*, 43 Cal. 534.

¹ See *Jennings v. Collins*, 99 Mass. 29, 31. If two town lots are occupied and used as one lot, the buildings thereon being partly on each, they may be sold for taxes together as one lot, their use and nature determining that they are to be regarded as one parcel: *Weaver v. Grant*, 39 Iowa 294. A block belonging to one person, and covered with buildings facing on several streets, but so joined together as to appear like one building, is properly assessed as one piece of property: *Jacobs v. Buckalew* (Ariz.), 40 Pac. Rep. 619. Contiguous lots so situated as to be incapable of separate valuation may be assessed together: *Spiech v. Tierney*, 56 Neb. 514. Contiguous lots owned by one person are properly assessed as one parcel if used together and having thereon a building which covers part of each: *Cooper v. Miller*, 113 Cal. 238. Parts of several lots are properly assessed as one body where they have frequently been so conveyed, and are inclosed by one fence: *Roth v. Gabbert*, 123 Mo. 21. Until

the contrary appears it will be presumed that lots were so situated as to render necessary their assessment together: *Pettibone v. Fitzgerald* (Neb.), 88 N. W. Rep. 143. If a taxpayer lists and values several parcels as one, and they are so assessed, he cannot, nor can his grantee, afterwards object to such assessment: *Albany Brewing Co. v. Meriden*, 48 Conn. 243; *Kissimmee City v. Drought*, 26 Fla. 1; *Dallas Title & T. Co. v. Oak Cliff*, 8 Tex. Civ. App. 217. See *Lane v. March's Succession*, 33 La. An. 554; *Carter v. New Orleans*, 33 La. An. 816; *Ward v. Board of Com'rs*, 12 Mont. 23.

² *Reading v. Finney*, 73 Pa. St. 467; *Wyman v. Baer*, 46 Mich. 418; *Morgan v. Smith*, 70 Tex. 637. In *Brown v. Hays*, 66 Pa. St. 229, it appeared that a certain warrant containing 1026 acres, of which all but sixteen were in P. township, was assessed in P. by its number, and the taxes paid for several years. Afterwards it was assessed by number in P., as 726 acres, and the remaining 300 acres in the other township. The owner paid the taxes in P., and the rest was sold. Held, that the payment by the number of the warrant was payment in full, and that the sale of 300 acres was wholly void. The assessor had no right to divide the tract in P. into two parcels when not divided by the owner; and the assessment with a wrong specification of quantity would not be notice to the owner that the remainder was assessed

Separate interests. In a majority of the states the rule prescribed by the statutes is that lands and other real estate shall be assessed *as such*, irrespective of the separate estates that individuals may have in them. Under such a practice, he who, for the time being, enjoys the possession of the real estate and the pertainancy of the profits may be charged with the tax.¹ The practice, however, has not been universal; in some states, and particularly in some special proceedings, the statutes have required separate interests to be separately assessed.² When the whole is assessed as an entirety, provision is usually made under which the respective owners may pay their proportions of the tax, and have their respective interests discharged of the lien.³ Reference has been made to the separate assessment of

elsewhere. For a case where a division of taxes was attempted after a subdivision into lots made subsequent to a forfeiture for taxes, see *Mecartney v. Morse*, 137 Ill. 481. In Illinois a city making assessments for house-drains and service water-pipes cannot subdivide property into lots, and assess each, but must proceed against property according to the description by which it is legally known and designated: *Cram v. Chicago*, 139 Ill. 265. Where a street is cut through a city lot two lots remain for assessment purposes: *Spangler v. Cleveland*, 35 Ohio St. 469; *Younglove v. Hackman*, 43 Ohio St. 69. As to the assessment of parts of a building as separate tenements, see *Cincinnati College v. Yeatman*, 30 Ohio St. 276.

¹*Turner v. Smith*, 14 Wall. 553; *Merrick v. Hutt*, 15 Ark. 331; *Briscoe v. Coulter*, 18 Ark. 423; *Atkins v. Hinman*, 2 Gilm. 437, 449; *Parker v. Baxter*, 2 Gray 185; *Willard v. Blount*, 11 Ired. 624; *Brown v. Austin*, 41 Vt. 262. And see *post*, ch. XIV.

²*State v. Campbell* (Tenn.), 41 S. W. Rep. 937. Separate interests in Pennsylvania assessed and sold separately. See *McLaughlin v. Kain*, 45 Pa. St. 113. As to Mississippi, see

Dunn v. Winston, 31 Miss. 135. As to Kentucky, see *Oldhams v. Jones*, 5 B. Monr. 464. In the case of special assessments it has been more usual to assess distinct interests separately, sometimes, however, providing for a sale of the fee. See *Jackson v. Babcock*, 16 N. Y. 246; *Matter of DeGraw St.*, 18 Wend. 568. And see, further, *Williams v. Brace*, 5 Conn. 190. The case of *Jackson v. Babcock*, 16 N. Y. 246, was this: The statute provided for proceedings in court under which, in street-opening cases, where there were distinct interests in lands which were subject to a lien for the assessment, one owner of an interest might proceed in the supreme court against all the others, including unknown owners, for an equitable apportionment of the assessment, and, after advertising for the appearance of the unknown owners, obtain an order for an absolute sale of the fee; the proceeds to be applied, so far as necessary, to the discharge of the assessment. This statute was held to be valid, and effectual to cut off all contingent as well as vested rights.

³*Corbine v. Inslee*, 24 Kan. 154. "While there is authority under the statute for redeeming an undivided

buildings,¹ and of mining and timber interests.² If easements are appurtenant to the realty they are taxed as a part of the land to which they belong, but easements in gross must be valued and taxed separately from the land out of which they are granted.³ Under the statutes of certain jurisdictions the execution of a mortgage divides realty into two parts, the right to foreclose for the mortgage debt, and the mortgager's title, and these are assessed to their respective owners, and each may be sold for unpaid taxes against it.⁴

Description. In listing the land it must be described with particularity sufficient to afford the owner the means of identification, and not to mislead him.⁵ Great strictness is some-

interest from a tax-sale, we find no authority for assessing land or assessing taxes thereon in any such undivided portions." *Easton v. Schofield*, 66 Minn. 425.

¹ *Ante*, p. 634.

² *Ante*, pp. 635, 636.

³ *Winnipiseogee Lake Manuf. Co. v. Gilford*, 64 N. H. 337. The land in and under a canal flowing through the premises of a manufacturing company is not taxable to it; the fee being in another and the company having no right to use the water: *Lowell v. Middlesex County Com'rs*, 152 Mass. 372. But such land is taxable to a manufacturing company which owns the fee and the right to use the water subject to the right of other persons to have the water flow through the canal for use beyond the company's premises: *Ibid*.

⁴ *Dekum v. Multnomah County*, 38 Or. 253. The California constitutional provision requiring interests of mortgagers and mortgagees to be assessed separately, and avoiding any contract whereby the debtor is bound to pay the tax of the mortgage interest, applies to a trust deed intended as a mortgage: *Sanford v. Savings & L. Soc.*, 80 Fed. Rep. 54. The assessor's failure to enter the value of the mortgage in the property own-

er's assessment, and to deduct it from the value of the property, avoids the assessment: *Knott v. Peden*, 84 Cal. 299.

⁵ *People v. Chicago & A. R. Co.*, 96 Ill. 369; *People v. Dragstrain*, 100 Ill. 286; *People v. Eggers*, 164 Ill. 515; *People v. Clifford*, 166 Ill. 165; *Illinois Central R. Co. v. People*, 170 Ill. 224; *Upton v. People*, 176 Ill. 632; *Augusti v. Lawless*, 43 La. An. 1097, 45 La. An. 1370; *Young v. Joslin*, 13 R. I. 675; *Hopkins v. Young*, 15 R. I. 48; *Evans v. Newell*, 18 R. I. 38; *Taylor v. Narragansett Pier Co.*, 19 R. I. 123. That a falsity in description affects all subsequent proceedings, see *Wilkins v. Tourtelot*, 28 Kan. 825; *Yenda v. Wheeler*, 9 Tex. 408. So, if an assessment is void for uncertainty of description, the state is not entitled to the lien provided by the constitution: *State v. Farmer* (Tex.), 59 S. W. Rep. 541. And where the description in the original assessment was too indefinite to be made the basis of a tax, a reassessment under a resolution of the board of supervisors providing for a levy on the same land on which it was originally assessed is invalid, though itself containing a definite description: *Auditor-General v. Smith*, 125 Mich. 576. But where the assessment of

times insisted upon in the description, on the idea that the government in taxing is proceeding in hostility to the interests of the person taxed. But this has very little foundation. A description that would be sufficient in a conveyance between individuals would generally be sufficient here. It is, nevertheless, possible for cases to arise in which such a criterion would be an unsafe one to apply. In a deed which one executes for the purpose of conveying a particular description of land, if errors of description occur, they may well be rejected and the deed sustained, if, after rejecting them, a sufficient description remains to identify the land intended; because the erroneous circumstances which were added could not have misled the party conveying, who, all the time, had in mind a particular parcel which the erroneous particulars did not fit. But the same errors in a description prepared by another might very likely mislead the owner, who would be informed of no error, and who must, from the description alone, discover what land was intended. The same may be said of any imperfection in the description; the owner, if it has been prepared by himself, will read it in connection with his own knowledge of those surrounding circumstances, in the light of which he has framed it;¹ but an equally imperfect

lands for taxation creates a personal charge, the tax may be collected though the description is bad: *State v. Union*, 36 N. J. L. 309. A description sufficient to ascertain location and extent is only indispensable to create a lien, and in its absence the tax may be enforced by any other lawful proceeding: *State v. Miles*, 48 N. J. L. 450. See *Law v. People*, 84 Ill. 142; *State v. Edgar*, 26 La. An. 726; *New Orleans v. Cassidy*, 27 La. An. 704. An action lies to recover a tax upon real estate though it is assessed as a fixed number of acres in a town without other identification or description: *Cressey v. Parks*, 76 Me. 532.

¹ A taxpayer is bound by a description which he himself has furnished: *San Francisco v. Flood*, 64 Cal. 504; *Lake County v. Sulphur Bank*, 68 Cal. 14; *Dear v. Varnum*,

80 Cal. 86; *Jeffries v. Clark*, 23 Kan. 448; *Hubbard v. Winsor*, 15 Mich. 146; *Sage v. Burlingame*, 74 Mich. 120. Under the North Dakota statute the assessor is officially responsible for the legal sufficiency of the description of all parcels of real estate returned by him, and where his return seeks to describe a parcel of land, but the description is fatally defective, it cannot be remedied by showing that it corresponds to a description furnished the assessor by the owner, or by any one else, since the public and bidders at tax-sales, as well as owners, are interested in the descriptions of real estate in tax-records and tax-titles: *Power v. Bowdle*, 3 N. D. 107. No one can object to his own tax because another's land is misdescribed: *Buck v. People*, 78 Ill. 560. See *Chiniquy v. People*, 78 Ill. 570.

description, prepared by another and unaccompanied by any such circumstances, would fail to convey to his mind any idea that his own land was intended. It certainly would be much less likely to do so than where he himself had formulated it.¹

The purposes in describing the land are: *first*, that the owner may have information of the claim made upon him or his property; *second*, that the public, in case the tax is not paid, may be notified what land is to be offered for sale for the non-payment; and *third*, that the purchaser may be enabled to obtain a sufficient conveyance. If the description is sufficient for the first purpose, it will ordinarily be sufficient for the others also. Several attempts have been made to lay down some general rule as to what is sufficient, and what not, for a description in the listing. "Notice," it is well said, "or at least the means of knowledge, is an essential element of every just proceeding which affects rights of persons or of property. But how can the duty of the payment of taxes be performed without the identity of the subject-matter of the duty being made known to him who is to perform it, by name or description? A thing, whether land or chattel, to be the subject of legal action, must be proceeded against by name or by description, but a name is descriptive only because it has become associated with the person or thing named. A name, therefore, which has never become connected in any manner with any title or possession of land, clearly infers no means of its identification. So the mathematical contents expressed in figures is not a mark of identity peculiar to the land; but, like a common noun, has no immediate or cognate relation to a particular tract. . . . Identity is said to be a matter for the jury. Certainly this is so; but from its very nature, the fact of identity is dependent on circumstances which attach themselves to the land. It is because the thing described answers to the circumstances of description, we are able to identify it. The evidence of identity is the record which contains the description and fixes the

¹ A description that would be sufficient in a conveyance between individuals is not necessarily so in proceedings for the levy and collection of taxes. An assessment of lots included in a recorded plat of the "F. & P. M. subdivision of part of a designated fractional section of land is void for discrepancy of description, where they are assessed as part of the "F. & P. M. subdivision of part of N. E. $\frac{1}{4}$ of" such subdivision: *Jackson v. Sloman*, 117 Mich. 126.

duty. Assessment is, from its legal requirement, and the necessity of preserving its evidence, a written entry, and must depend upon the records of the commissioner's office, and not upon parol testimony, or the private duplicate of the assessor."¹ And, after an examination of cases decided, it is added: "The result of the whole is, that where the assessment wholly fails to lead to identification, so that neither the owner nor the officer can tell that his land is taxed, the duty of payment cannot be performed, and the assessment is void."² The rule thus

¹ *Philadelphia v. Miller*, 49 Pa. St. 440, 448, per *Agnew*, J., citing and commenting upon *McCall v. Larimer*, 4 Watts 351, 355, 4 W. & S. 183; *Dunn v. Relyea*, 6 W. & S. 475; *Stewart v. Shoenfelt*, 13 S. & R. 360; *Luffborough v. Parker*, 16 S. & R. 351; *Morton v. Harris*, 9 Watts 319, 325; *Hubley v. Keyser*, 2 P. & Watts 496; *Strauch v. Shoemaker*, 1 W. & S. 166; *Burns v. Lyon*, 4 Watts 363; *Harper v. McKeehan*, 3 W. & S. 328; *Russel v. Werntz*, 24 Pa. St. 337; *Laird v. Hiester*, 24 Pa. St. 452; *Miller v. Hale*, 26 Pa. St. 432; *Cooper v. Brockway*, 8 Watts 162, 165; *Thompson v. Fisher*, 6 W. & S. 520; *Dunden v. Snodgrass*, 18 Pa. St. 151; *Woodside v. Wilson*, 32 Pa. St. 52. These cases pass upon a great variety of descriptions, some of which are held sufficient, and some are not. It is provided by statute in Mississippi that parol testimony shall be admissible to apply a description of land on an assessment roll or in a tax-deed, when such testimony will show what land was assessed and sold. Under this statute, where a tax-deed and the decree confirming it describe the property as "fractional 38 acres in S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$," assessed to C., evidence showing the title and location of two acres in such forty-acre tract, not assessed to C., is admissible to identify the thirty-eight acres: *Illinois Central R. Co. v. Le Blanc*, 74 Miss. 650. But oral evidence as to what land was intended to be as-

sessed and sold is inadmissible: *Sims v. Warren*, 68 Miss. 447; *McQueen v. Bush*, 76 Miss. 283. And the statute quoted does not authorize parol testimony to fix on any particular tract of land a description in an assessment and a tax-deed as "part of lots 19, 20, and 21, in square B., J. W. W.'s survey:" *Hughes v. Thomas* (Miss.), 29 S. W. Rep. 74. A description of land on the assessment-roll and in a conveyance for taxes was held insufficient to be applied to a particular tract by parol testimony under the Mississippi statute: *Smith v. Hickman* (Miss.), 24 South. Rep. 973. But where an assessment is not complete and is undergoing direct adjudication in a suit, a misdescription therein may be shown by parol: *Vicksburg Bank v. Adams*, 74 Miss. 179. Where land was described in assessment-roll and tax-deed as "E. $\frac{1}{2}$ west of Bowie, Sec. 32, T. 5 N., R. 13 W.," the land intended being the E. $\frac{1}{2}$ of section 32, which lay west of the Bowie river, it was held that the application of the description to the land in question was shown without parol evidence by a statement, in the complaint in a suit to cancel the tax-deed as a cloud on title on account of the ambiguity arising from the failure to designate Bowie as a river—that the land in question lay west of the Bowie river: *Nixon v. Clevenger*, 74 Miss. 67.

² *Harris v. Tyson*, 24 Pa. St. 347; *Philadelphia v. Miller*, 49 Pa. St. 440,

given is quite as liberal in support of imperfect and inaccurate descriptions as would be applied to conveyances *inter partes*. In another case in the same state it is said a sale "will pass the title, although assessed in a wrong name or by a wrong number, if otherwise designated and capable of identification. The reason for this is the recognized principle that it is the land, and not the owner, which is chargeable, and to be charged, with the tax. It must, however, be susceptible of identification as the land assessed, otherwise the sale would be void."¹ But identification may possibly be made out to the

455. See, also, *Glass v. Gilbert*, 58 Pa. St. 266. It is the return of the tract by the assessors which fixes its identity and liability to taxation: *Brown v. Hayes*, 66 Pa. St. 229. In some states, however, provision is made by law for a correction of the descriptions by the county board.

¹ *Thompson, J.*, in *Woodside v. Wilson*, 32 Pa. St. 52, 54. This statement would, of course, be inapplicable to the case of an assessment of resident land. When the law requires it to be assessed to the owner, it must be so assessed. See *ante*, pp. 726, 727. Under a statute requiring the assessment-roll to furnish a clew for the identification of assessed land, a bill to confirm a tax-title cannot furnish a clew: *McQueen v. Bush*, 76 Miss. 283. The name of a person to whom land is assessed is not descriptive and cannot be considered in aid of a description in the assessment roll: *Ibid*. But it is held that in the absence of more controlling features to distinguish the individual halves of a tract of land respectively entered as belonging to different owners, the owners' names furnish sufficient signs for distinguishment: *Wray v. Litchfield*, 64 Minn. 309. An assessment which includes several tracts of land under the common description of "beach" is invalid, where it appears that such description does not iden-

tify the land with certainty, and the owner cannot tell from it whether other lands than his own are not included therein: *Taylor v. Narragansett Pier Co.*, 19 R. I. 123. In a proceeding for assessments for street work, a recorded diagram in which there is nothing to indicate the points of the compass whereby an owner can determine, from an inspection of the diagram and assessment, where upon the map his land is platted, is insufficient: *Labs v. Cooper*, 107 Cal. 656. An assessment to N. of "land, forty acres in road district No. 21, in the township of Woodbridge," was held good where N. owned no other land in the district: *State v. Woodbridge*, 42 N. J. L. 401. Where land is assessed as six acres in the corner of a tract, it will be taken to be six acres in square form, and the assessment held good: *Immegart v. Gorgas*, 41 Ind. 439. Land assessed as the east end of a block, etc., held to be the east half: *Chiniquy v. People*, 78 Ill. 570. A description of land by the number in a certain square, fixed also by number, bounded by four named streets, with correct measurements, held identified as sufficiently as if the assessor had followed the description given in the act of purchase: *In re Wenck*, 52 La. An. 376. A listing of lots as in "T's Addition" without showing to what town or city it was

satisfaction of a jury by a description that would be extremely likely to mislead the owner himself; the jury having their attention called to the errors or defects which exist, and the owner not being aware that there are any, but having a right to assume, until notified to the contrary, that all descriptions in the list have accurate application to some particular pieces of property, and fit some others when not appearing to fit his. A more satisfactory rule would seem to be that "the designation of the land will be sufficient if it afford the means of identification, and do not positively mislead the owner,"¹ or be calculated to mislead him.² It is thus expressed in a New

an addition, but sworn to before the assessor of the precinct in which T.'s addition was situated, and filed in the proper county office, was sustained: *Alexander v. Hunter*, 29 Neb. 259. Where lands were described as parts of lots in an assessor's plat not made by the county surveyor as required by the statute, such description was held insufficient: *People v. Reat*, 107 Ill. 581; *Upton v. People*, 176 Ill. 632. Where part of a city plat has been vacated, the assessment can no longer be made of the land as city lands: *Stebbins v. Chellis*, 15 Kan. 55. An assessment according to a plat made by some one else than the owner is bad: *Gage v. Rumsey*, 73 Ill. 473. Unless such plat has been recognized by the real owner: *Harts v. People*, 171 Ill. 373, 458. An assessment according to the description in an unrecorded plat is invalid; but not so where lots have been conveyed and improvements made with reference to the plat: *People v. Clifford*, 166 Ill. 165; *Roads v. Estabrook*, 35 Neb. 297. That a town plat laying out land into lots and blocks has never been vacated, held not to invalidate an assessment describing the land by governmental subdivisions: *Cahalan v. Van Sant*, 87 Iowa 593. Land-owner held not bound, as matter of law, to take notice, in paying taxes, of a new map

giving a new description of his lands, which map has been used in assessing such lands: *Richter v. Beaumont*, 67 Miss. 285; *Lewis v. Monson*, 151 U. S. 545.

¹ *Thompson, J.*, in *Woodside v. Wilson*, 32 Pa. St. 52, 55; *Fulcher v. Fulcher*, 122 N. C. 101.

² An assessment is said to be sufficient if by it a competent person could identify the land: *Sloan v. Sewell*, 81 Ind. 180. See *Oldtown v. Blake*, 74 Me. 280; *Law v. People*, 80 Ill. 268; *Fowler v. People*, 93 Ill. 116. An assessment against "Trustees First Congregational Church," the property assessed being described as "parsonage" without stating the quantity of land assessed, is not misleading: *People v. O'Brien*, 53 Hun 580. An assessment of the "wharf property" of a city was held sufficient under a statute providing that no informality in the description of property assessed should invalidate the assessment if the property could with reasonable certainty be located from the description given: *Commonwealth v. Louisville (Ky.)*, 47 S. W. Rep. 865. An assessment for betterments, describing the land assessed as belonging to certain persons, and situated on the east side of the street on which the improvements were made, is not void for indefiniteness: *Masonic Building Assoc.*

York case: "An assessment of non-resident land is fatally defective and void if it contain such a falsity in the designation or description of the parcel assessed as might probably mislead the owner and prevent him from ascertaining by the notices

v. Brownell, 164 Mass. 306. A description "one hundred yards square," with definite boundaries on three sides, is sufficient: *Garwood v. Hastings*, 38 Cal. 216. A description held sufficient though one call was given erroneously, where the identity of the land was, apparent from other calls: *Lower King's River Reclamation Dist. v. McCullah*, 124 Cal. 175. An assessment of street lots by the boundaries derived from the act by which the property was conveyed, giving the changed names whereby two of the boundaries were known when assessed, and stating the number of lots as they were given in the act, was sufficient to support a tax-sale, though the depth of the lots was incorrectly stated: *Poland v. Dreyfous*, 48 La. An. 83. Assessment void if describing the property as lots of specified numbers in a certain square, when there are no such numbers in that square, and the lots intended to be assessed are in realty numbered otherwise: *Augusti v. Lawless*, 45 La. An. 1370. An assessment of lots 41 and 42 of square 69 as lots 41 and 42 without mentioning the square is unintelligible and void: *McClellan v. District of Columbia*, 7 Mackey 94. "William Bush's heirs, 2,560 acres," held insufficient: *Bush v. Williams, Cooke (Tenn.)* 274. So where the description was "Moses Buffum, house and land," Buffum not being the occupant: *Farnum v. Buffum*, 4 Cush. 260. Compare *Coombs v. Warren*, 34 Me. 89. Where the statute provides that for the assessment of railroad property the assessment shall be sufficient "by metes and bounds or other description sufficient for redemption," an assessment of the roadway is sufficient which gives the *termini*, courses, and distances: *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12. An assessment against property belonging to a railroad company, as "the undivided half of G.'s addition to the city of K., except all that part thereof assessed by the state board of equalization," was rendered too indefinite by the exception: *State v. Wabash R. Co.*, 114 Mo. 1. A sale of land for unpaid taxes according to the legal description of the land is invalid where the same land has been assessed under a different description, which, though not technically correct, was sufficient to identify the property, and the taxes according to such latter description had been paid before the sale: *Rath v. Martin*, 93 Iowa 499. To the same effect, *Kelly v. Salinger*, 53 Ark. 114; *Lonergan v. Baber*, 59 Ark. 15. In *Curtis v. Brown County Supervisors*, 22 Wis. 167, it is denied that a description sufficient as between parties will be sufficient always in an assessment, or that particulars in it which are erroneous can be rejected as surplusage. To the same point is *Dike v. Lewis*, 4 Denio 327. See, also, *Orton v. Noonan*, 23 Wis. 102, in which it is said words cannot be supplied by intendment. It is to be observed of this case, however, that the words it was proposed to supply would wholly have changed the apparent meaning. It is held in *Kershaw v. Jansen*, 49 Neb. 467, citing *Bryant v. Estabrook*, 16 Neb. 217, and *Roads v. Estabrook*, 35 Neb. 297, that a description for taxation is sufficient if it describes the land with such certainty as to afford notice to the

that his land was to be sold or redeemed. Such a mistake or falsity defeats one of the obvious and just purposes of the statute — that of giving to the owner an opportunity of preventing the sale by paying the tax.”¹ Under this rule each case must depend so much upon its own special facts that little service could be done by giving all of the decided cases in detail here. It has been held that the headings of the columns of an assessment roll are a part of the description of the land assessed.² The designation or description of land by which it is commonly known is sufficient for assessment purposes though it be not technically or exactly the proper name of the same.³ An assessment as definite as the grant under which the land is held is sufficient.⁴ So is a description of the land

owner; and, accordingly, the owner of land subject to taxation cannot avoid the payment of taxes because the description of the land on the assessment-roll and tax-list does not refer to a lawfully existing recorded plat or subdivision. That lots were assessed as “fractional” lots, when the official plat does not contain such term, held immaterial: *Noyes v. King County*, 18 Wash. 417. Where part of a city lot is condemned by a railroad company for a right of way, the rest is sufficiently described for taxation as a fractional lot: *Johnson v. Tierney*, 56 Neb. 514.

¹ *Ruggies, J.*, in *Tallman v. White*, 2 N. Y. 66, 71. See, also, *Green v. Lunt*, 58 Me. 15; *Farnum v. Buffum*, 4 Cush. 260; *Hill v. Mowry*, 6 Gray 551; *Amberg v. Rogers*, 9 Mich. 332; *State v. Union*, 36 N. J. L. 309; *Lafferty v. Byers*, 5 Ohio 458; *Turney v. Yeoman*, 16 Ohio 24; *Fisk v. Corey*, 141 Pa. St. 334; *Van Cise v. Carter*, 9 S. D. 234. In New Hampshire if an assessment of non-resident land omits to state the number of acres of land taxed, as required by statute, such omission is fatal: *Weeks v. Waldron*, 64 N. H. 149. But the details required in the description of non-resident land are not required in

describing lands invoiced as resident: *Drew v. Morrill*, 62 N. H. 23; *Langley v. Batchelder*, 69 N. H. 566.

² *State v. Vaile*, 123 Mo. 33.

³ *Gilfillan v. Hobart*, 34 Minn. 67; *Godfrey v. Valentine*, 45 Minn. 502; *Minneapolis R. T. Co. v. Minnesota Debenture Co.*, 81 Minn. 66; *Hopkins v. Young*, 15 R. I. 48. Descriptive names sometimes used, but not known to the official record of title, held insufficient under the Florida statute, especially where the acreage given was materially different from that of the tract intended to be described: *Bird v. Benlisa*, 142 U. S. 664.

⁴ *People v. Crockett*, 33 Cal. 150; *San Gabriel Valley L. & W. Co. v. Witmer Bros. Co.*, 96 Cal. 623; *Muscatine v. Chicago, R. I. & P. R. Co.*, 79 Iowa 645; *Tulle v. De Monasterio*, 48 La. An. 1232. An assessment according to the description of the property in a partition proceeding and on record is sufficient: *Bristol v. Murff*, 49 La. An. 357. Description for a paving assessment according to the title as it appears of record is good: *Roberts v. First Nat. Bank*, 8 N. D. 504. It is not essential to the validity of an assessment that it follow exactly the deed of the property to the tax debtor: *Chapin v. Pollet*,

by well-understood abbreviations.¹ Error, however great, in stating the quantity of the land will not vitiate.² But where the description in an assessment could apply to either of two pieces of land, it is void for uncertainty,³ as is also a description which is part of a section, block, or lot, without showing how much or giving boundaries.⁴ The omission of the num-

48 La. An. 1186. An assessment which fails to conform to the statute requiring a reference to the recorded titles of the land assessed cannot support a tax-sale: *Gulf States L. & I. Co. v. Fasnacht's Succession*, 47 La. An. 1294.

¹ *Holley v. Orange County*, 106 Cal. 420; *Sibley v. Smith*, 2 Mich. 486, 503; *Auditor-General v. Sparrow*, 116 Mich. 574; *State v. Vaile*, 122 Mo. 33. See, also, *Hodgdon v. Burleigh*, 4 Fed. Rep. 111; *Atkins v. Hinman*, 2 Gilm. 437; *Olcott v. State*, 5 Gilm. 481; *Blakely v. Bestor*, 13 Ill. 714; *Buck v. People*, 78 Ill. 560; *Paris v. Lewis*, 85 Ill. 597; *Long v. Long*, 2 Blackf. 293; *Jordan, etc. Assoc. v. Wagoner*, 33 Ind. 50; *Goodell v. Harrison*, 2 Mo. 124; *State v. Newark*, 36 N. J. L. 288; *Stevens v. Hollister*, 18 Vt. 594. The description "N. E. S. E., Sec. 24, Tp. 13, R. T. 40 acres," is sufficient in an assessment list and notice of sale for taxes, under a statute providing that lands shall if practicable be designated according to governmental surveys: *Chestnut v. Harris*, 64 Ark. 580. Such combinations of letters and figures in an assessment roll as N W,⁴ N W⁴ of N E⁴, NE SW, W² S W, are insufficient and invalid as descriptions of parts of sections of land, since such writing is not English as it is ordinarily used, and is without the sanction of any general usage among the masses of the people: *Power v. Bowdle*, 3 N. D. 107. See *Turner v. Hand County*, 11 S. D. 348. An assessment against property described as "V. C. N. E. Cedar & Tennessee," is insufficient for indefiniteness: *Smith v. Cox*, 115 Ala. 503.

² *Gilman v. Riopelle*, 18 Mich. 145; *People v. Adams*, 10 N. Y. Supp. 295; *Williston v. Cobbett*, 9 Pa. St. 38; *Brown v. Hays*, 66 Pa. St. 229; *Putnam v. Tyler*, 117 Pa. St. 570. The description by subdivisions of land purchased from the state will control the number of acres claimed to exist in the tax-roll and tax-deed: *Wehre v. Lutcher*, 45 La. An. 574.

³ *State v. Farmer (Tex.)*, 59 S. W. Rep. 541. A description of land in the tax-roll for D. township as "Sec. 8, T. 6, R. 6," held sufficient, although there were other townships in the state numbered 6 in Range 7: *Dumphy v. Auditor-General*, 123 Mich. 354. An assessment against P. of "a house and lot on B. street," was held void for uncertainty where P. owned another house and lot in the same street, and where the statute required real property to be taxed by numbers, or in some way by which it might be known: *Jones v. Pelham*, 84 Ala. 208.

⁴ *Texarkana Water Co. v. State*, 62 Ark. 188; *Naltner v. Blake*, 56 Ind. 127; *Roberts v. Deeds*, 57 Iowa 320; *Green v. Lunt*, 58 Me. 518; *Detroit Young Men's Soc. v. Detroit*, 3 Mich. 172; *Yandell v. Pugh*, 53 Miss. 295; *Cogburn v. Hunt*, 54 Miss. 675; *Hughes v. Thomas (Miss.)*, 29 South. Rep. 74; *Johnson County v. Tierney*, 56 Neb. 514; *State v. Elizabeth*, 39 N. J. L. 689; *Marrie v. Long*, 2 Ohio 287, 289. An assessment describing the property as the center 22 feet of a certain lot is too indefinite: *Auditor-General v. Smith*, 125 Mich. 576. So is a description of land as a "fraction of lot No. 2" in a

ber of a town lot, or the name of the owner, is fatal where the law requires these to be given.¹ And where the legislature has declared explicitly how a particular kind of property should be assessed on the assessment roll, the statute should be regarded as mandatory, not directory.²

It has been held that the provisions of a city charter requiring railroad property to be designated on the assessment rolls by lot and block number do not apply to railroad tracks, telegraph lines, etc., in the street, but only to lots.³ Under a stat-

certain block: *Jory v. Palace Dry Goods, etc. Co.*, 30 Or. 196. And the description "74½x165, lot 5, block 33, plat B." without any other description, when lot 5 had an area of 10x20 rods, is also too uncertain: *Eastman v. Gurrey*, 15 Utah 410. An assessment roll describing land as the "fractional part of section 4" is fatally defective, there being nothing to designate what part of the section is assessed: *Grisson v. Furman*, 22 Fla. 581. But the description "that part of private claim 61, lying east of the north branch of the river Ecorse" in a township named, is sufficient: *Gilman v. Riopelle*, 18 Mich. 145. And an assessment of "balance of S. ½ block 8" is not void for uncertainty where it is immediately preceded by an assessment of the first part of the half block, describing it by metes and bounds, which renders the balance determinable: *Greenwood v. La Salle*, 137 Ill. 225. Description of property as "parts of blocks 8 and 9, and the right of way across Broadway," and statement of assessment thereon as \$13,500, without stating the location of said blocks, or what part of them is assessed, or whether they are improved or not, held insufficient: *Louisville & N. R. Co. v. East St. Louis*, 134 Ill. 656. Where land is assessed as W.'s 80 acres "on" the N. W. ¼ of section 23, the sale of it for taxes is void under a statute providing that in assessing real estate it shall be referred to with reason-

able certainty as to locality and quantity: *Olsen v. Bagley*, 10 Utah 492. An assessment of real property described as "a tract of land entered by Frozier in section 13, township 13, range 7, is void for indefiniteness: *Lake County v. Sulphur Bank Quicksilver Mining Co.*, 66 Cal. 17. And see *Petit v. Flint & P. M. R. Co.*, 114 Mich. 362.

¹ *Ex parte Thacher*, 3 Sneed 344. See *Jones v. Pelham*, 84 Ala. 208. Under a statute providing that resident lands shall be assessed by the number of the lot, or such other description as it is commonly known by, the description "L. G. M.—J. M. occupant—75 acres," is insufficient: *Jones v. Blanchard*, 62 N. H. 651.

² *Hammon v. Mix* (C. C. A.), 104 Fed. Rep. 689. This case holds that the assessor's failure to comply with the Colorado statute requiring the survey numbers of mining claims to be given on the assessment rolls renders a sale void if not corrected before; and see *Henderson v. White*, 69 Tex. 103; *Gulf, C. & S. F. R. Co. v. Pointdexter*, 70 Tex. 98; *Morgan v. Smith*, 70 Tex. 637.

³ *Brooklyn E. R. Co. v. Brooklyn*, 16 Misc. Rep. 416, 38 N. Y. Supp. 154. Where the description of railroad realty in an assessment book refers for a detailed description to a schedule recorded in another page of the same book, it will be presumed sufficient in the absence of further evidence as to such schedule: *Cairo, V. & C. R. Co. v. Mathews*, 152 Ill. 153.

ute providing that assessors in assessing certain bridges shall state "the metes and bounds of the ground occupied by such bridge," the assessors should state the length of the bridge and approach assessed.¹ The cases cited in the margin afford additional illustrations of what constitutes sufficiency of description in assessment.²

¹ *Keokuk & H. B. R. Co. v. People*, 145 Ill. 596. See, as to description of bridge property, *Louisville Bridge Co. v. Louisville (Ky.)*, 58 S. W. Rep. 598.

² *Ronkendorf v. Taylor*, 4 Pet. 349; *Kelly v. Sanders*, 99 U. S. 441; *Sherry v. McKinley*, 99 U. S. 496; *Rich v. Braxton*, 158 U. S. 375; *Kelley v. Herrall*, 20 Fed. Rep. 364; *Jenkins v. McTigue*, 22 Fed. Rep. 148; *Driggers v. Cassady*, 71 Ala. 529; *Dane v. Glennon*, 72 Ala. 160; *Kelly v. Salinger*, 53 Ark. 114; *Latchman v. Clark*, 14 Cal. 131; *High v. Shoemaker*, 22 Cal. 363; *Bosworth v. Danzien*, 25 Cal. 296; *People v. Flint*, 39 Cal. 670; *People v. Mahoney*, 55 Cal. 286; *Anderson v. Hancock*, 61 Cal. 88; *San Gabriel Valley L. & W. Co. v. Witmer Bros.*, 96 Cal. 623; *Labs v. Cooper*, 107 Cal. 656; *Santa Barbara v. Eldred*, 108 Cal. 294; *Bensinger v. District of Columbia*, 6 Mackey 285; *Law v. People*, 84 Ill. 142; *People v. Chicago, etc. Co.*, 96 Ill. 369; *People v. Stahl*, 101 Ill. 346; *Sanford v. People*, 102 Ill. 374; *Illinois Central R. Co. v. People*, 170 Ill. 224; *Hannah v. Collins*, 94 Ind. 201; *Sample v. Carroll*, 132 Ind. 496; *Shaw v. Orr*, 30 Iowa 355; *Blair, etc. Co. v. Scott*, 44 Iowa 143; *Judd v. Anderson*, 51 Iowa 345; *Griffin v. Tuttle*, 74 Iowa 219; *Jefferson County Com'rs v. Johnson*, 22 Kan. 717; *Sullivan v. Davis*, 29 Kan. 28; *Harding v. Greene*, 59 Kan. 202; *Currie v. Fowler*, 5 J. J. Marsh. 145; *Jaques v. Kopman*, 6 La. An. 542; *Woolfolk v. Fonbane*, 15 La. An. 15; *Thibodaux v. Kellar*, 29 La. An. 508; *Person v. O'Neal*, 32 La. An. 228; Ed-

wards' Succession, 32 La. An. 457; *Hood v. New Orleans*, 49 La. An. 1461; *Russell v. Lang*, 50 La. An. 36; *Larabee v. Hodgkins*, 58 Me. 412; *Griffin v. Griffin*, 60 Me. 270; *Orono v. Veazie*, 61 Me. 431; *Bingham v. Smith*, 64 Me. 450; *Whitmore v. Learned*, 70 Me. 276; *Bemis v. Caldwell*, 143 Mass. 299; *Le Fevre v. Detroit*, 2 Mich. 586; *Wright v. Dunham*, 13 Mich. 414; *Atwell v. Zeluff*, 26 Mich. 118, 121; *Bird v. Perkins*, 33 Mich. 28; *Taylor v. Youngs*, 48 Mich. 268; *Mann v. Carson*, 120 Mich. 631; *Wilkin v. Keith*, 121 Mich. 66; *Bidwell v. Webb*, 10 Minn. 59; *Bidwell v. Coleman*, 11 Minn. 78; *St. Peter's Church v. Scott County*, 12 Minn. 395; *Keith v. Hayden*, 26 Minn. 212; *Bowyer v. O'Donnall*, 29 Minn. 135; *Stewart v. Coulter*, 31 Minn. 385; *Davis v. How*, 52 Minn. 157; *Merchants' Realty Co. v. St. Paul*, 77 Minn. 343; *Bowers v. Chambers*, 53 Miss. 259; *Selden v. Coffee*, 55 Miss. 41; *Sims v. Warren*, 67 Miss. 278; *Vaughan v. Swayzie*, 56 Miss. 704; *Havard v. Day*, 62 Miss. 748; *Trager v. Jenkins*, 75 Miss. 676; *Wing v. Minor (Miss.)*, 7 South. Rep. 347; *Jefferson City v. Whipple*, 71 Mo. 519; *State v. Wabash R. Co.*, 141 Mo. 1; *State v. Central Pac. R. Co.*, 21 Nev. 94; *Ainsworth v. Dean*, 21 N. H. 400; *Drew v. Morrill*, 62 N. H. 23; *State v. Franklin*, 46 N. J. L. 437; *Fulcher v. Fulcher*, 122 N. C. 101; *Powers v. Larabee*, 2 N. D. 141; *O'Neil v. Tyler*, 3 N. D. 47; *Powers v. Bowdle*, 3 N. D. 107; *Sheets v. Paine (N. D.)*, 86 N. W. Rep. 117; *Lafferty's Lessee v. Byers*, 5 Ohio 458; *Trevor v. Emerick*, 6 Ohio 691; *Holmes v. School Dist.*,

Valuation for assessment. Where the grouping of lands for assessment is inadmissible, the valuation of several parcels in gross is equally so. No useful purpose could be served by separate descriptions if the parcels, though separately described, were to be grouped in valuation.¹

It is elsewhere shown² that valuation is in its nature a judicial act,³ and that the assessors in making it are entitled to the customary protection which the law accords to officers exercising corresponding judicial functions. The person injured by their errors, committed without fraud or malice, has in general only such remedy as the statute may afford him. And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him only with a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little, and another too much.⁴ This is a rule which

11 Or. 332; *Jory v. Palace, etc. Co.*, 30 Or. 196; *Scranton v. Jones*, 133 Pa. St. 219; *Hopkins v. Young*, 15 R. I. 48; *Eustis v. Henrietta*, 90 Tex. 463; *Eastman v. Gurrey*, 15 Utah 410; *Jenkins v. Sharpf*, 27 Wis. 472; *Dolan v. Trelevan*, 31 Wis. 147; *Whitney v. Gunderson*, 31 Wis. 359; *Scheiber v. Kaehler*, 49 Wis. 261; *Johnson v. Lumber Co.*, 52 Wis. 458; *McMillan v. Wehle*, 55 Wis. 685; *Campbell v. Packard*, 61 Wis. 88; *Yellow River Imp. Co. v. Wood County*, 82 Wis. 322.

¹ *People v. Mining Co.*, 39 Cal. 511; *People v. Hollister*, 47 Cal. 408; *Parker v. Jacksonville*, 37 Fla. 342; *McKeown v. Collins*, 38 Fla. 276; *Frazier v. Prince*, 8 Okl. 253. In *People v. Hollister, supra*, there was a separate valuation of each parcel in the column with the descriptions, but not carried into the appropriate column. A statutory provision that the assessor shall determine the value of each piece of realty listed for taxation, and shall enter the value thereof opposite each description of property, is mandatory; and failure to do so cannot be remedied by such ac-

tion on the treasurer's part: *Lockwood v. Roys*, 11 Wash. 697.

² *Post*, ch. XXIV.

³ *Slaughter v. Louisville*, 89 Ky. 112; *Boody v. Watson*, 64 N. H. 162.

⁴ *Ives v. Goshen*, 65 Conn. 456; *Cicopee v. County Com'rs*, 16 Gray 38; *State v. Thayer*, 69 Minn. 170; *Amoskeag Manuf. Co. v. Manchester (N. H.)*, 46 Atl. Rep. 470. See *Chicago, etc. R. Co. v. Livingston County*, 68 Ill. 458; *Pelton v. National Bank*, 101 U. S. 143; *Cummings v. National Bank*, 101 U. S. 153; *Boyer v. Boyer*, 113 U. S. 689. An overvaluation of personalty cannot be sustained because the realty was undervalued: *People v. Barker*, 81 Hun 22. On appeal to a court from valuation by board of relief of plaintiff's property in a city, evidence of the value of one piece of property to show that an excessive valuation of other property of the same owner should not be reduced was properly excluded: *Toof v. New Haven (Conn.)*, 48 Atl. Rep. 208. Under a statute providing for the reduction of an assessment where the valuation is unequal be-

has been applied when assessors are found to have systematically understated all the property of their district, though the statute in most positive terms required an assessment at the actual value. The wrong of a disregard of the statute in such a case is a public and not a private wrong.¹ It is generally

cause made "at a higher proportionate valuation" than other property on the same roll, one's right to such a reduction is not established simply by showing that some other property of the same description is valued on the same roll at a less proportionate value, but it must also appear that because of undervaluation of particular property with which his own is compared, the claimant will be compelled to pay more than his proportionate share of the aggregate tax: *People v. Carter*, 109 N. Y. 576. It is sufficient, under such a statute, to compare the property with the other tracts of land in the town used for the same purpose: *People v. Christie*, 115 N. Y. 158. See, also, *People v. Ganley*, 8 N. Y. Supp. 563; *People v. Van Nostrand*, 71 Hun 611, 24 N. Y. Supp. 513. Where a city adopts a rule to assess land at one-half of its value, an assessment of particular land at more than half will be reduced, though the statute provides that all property shall be assessed at its true value: *Randell v. Bridgeport*, 63 Conn. 321. And evidence of the value placed on other property in the town is admissible on the question of the existence of a rule that property be assessed at a certain fraction of its value: *Greenwoods Co. v. New Hartford*, 65 Conn. 461. But where the complaint is of excessive valuation merely, evidence that other property is assessed at a lower rate of valuation is not admissible: *White v. Portland*, 63 Conn. 18. In any event such evidence should be excluded where the properties sought to be compared, and the modes of taxation, are wholly unlike: *Ibid.* And see, further, *Ives v. Goshen*, 63

Conn. 79. It has recently been held in Tennessee, that one whose property has been assessed at less than its cash value, but proportionately higher than the property of others, cannot have his assessment reduced, but may have the assessments of others raised: *Carroll v. Alsup* (Tenn.), 64 S. W. Rep. 193. In a proceeding by the state to raise the assessed value of certain land, evidence that an owner of similar land in the same neighborhood gave a certain value for taxation, or that his lands were assessed at a certain higher value, was held inadmissible: *State v. Sage L. & L. Co.*, 118 Ala. 677.

¹ *Moss v. Cummings*, 44 Mich. 359. See *Monroe v. New Canaan*, 43 Conn. 309; *Blanchard v. Powers*, 42 Mich. 613; *Gamble v. East Saginaw*, 43 Mich. 368; *State v. Thayer*, 69 Minn. 170. An intentional under-assessment of taxable property is invalid, whether it was the result of an agreement with the owners of such property, or of the officer's disregard of duty: *Auditor-General v. Jenkinson*, 90 Mich. 523. Testimony as to undervaluation in pursuance of general understanding among supervisors: *Williams v. Mears*, 61 Mich. 86. In Wisconsin it has been held that assessments intentionally made at one-third of the real value are void: *Hershey v. Supervisors*, 37 Wis. 75; *Marsh v. Supervisors*, 42 Wis. 502; *Goff v. Supervisors*, 43 Wis. 55; *Schettler v. Fort Howard*, 43 Wis. 48; *Salscheider v. Fort Howard*, 45 Wis. 519. That the testimony of two business men as to the value of lots differs considerably from the judgment of the assessor and board of review is not sufficient to impeach the assessment or show

held, also, that one whose property has not been assessed above its true value, or its cash value, or whatever may be the statutory specification as to value, cannot claim that his assessment is invalidated because the property of other persons is assessed at less than such value.¹ For the presumption is that those who made the assessment acted not arbitrarily, but according to the best of their information and belief;² and, as will be seen hereafter, a board of review or equalization is usually provided for the express purpose of remedying inequalities of assessment.³ But it is not admissible to correct the relative assessment of an owner's realty and personalty by increasing the valuation of such realty while the valuation of other lands and the aggregate valuation of such owner's estate remain unchanged.⁴

The legislature, as has been said, cannot make the valuation of property for taxation.⁵ The nearest approach to the exercise of such authority by the law-making power is where it definitely fixes the basis for a local assessment, by the acre, by frontage, etc. But in such cases the considerations which affect benefits are matters of notoriety, and may well be taken advantage of by the legislative body when prescribing a rule which, at least in the particular case, is to operate generally and with uniformity.

A requirement that taxation shall be by value is of course

intentional undervaluation: *Hixon v. Oneida County*, 82 Wis. 515. Further as to undervaluation, see *ante*, p. 385.

¹ *Georgia Midland & G. R. Co. v. State*, 89 Ga. 597; *People v. Lots in Ashley*, 122 Ill. 297; *Illinois & St. L. R. Co. v. Stookey*, 122 Ill. 358; *Keokuk & H. B. R. Co. v. People*, 161 Ill. 514; *Louisville R. Co. v. Commonwealth (Ky.)*, 49 S. W. Rep. 486; *Alexander v. Thomas*, 70 Miss. 517; *McCurdy v. Prugh*, 59 Ohio St. 465; *Commonwealth v. New York, P. & O. R. Co.*, 188 Pa. St. 169. That assessors have in violation of law assessed property for taxation at less than its fair cash value does not affect the basis of valuation of corporations for

taxation: *Paducah St. R. Co. v. McCracken County (Ky.)*, 49 S. W. Rep. 178.

² *State v. Pierson*, 47 N. J. L. 247. All legal presumptions favor an assessment: *Richmond, etc. Co. v. Alabama Com'rs*, 84 N. C. 504. In the absence of any complaint of excessive valuation it will be presumed that the proper rule was adopted in making the assessment: *People v. Collison*, 22 Abb. N. C. 52, 6 N. Y. Supp. 711.

³ See *post*, p. 771.

⁴ *Newport Illum. Co. v. Tax Assessors*, 19 R. I. 475.

⁵ See the cases cited on this point p. 600, *ante*.

mandatory.¹ The wording of the requirement varies, such expressions as "actual value," "fair value," "full value," "true value," "cash value," "actual cash value," "fair cash value," "true cash value," being used frequently in the statutes.²

Value, how ascertained. As to the methods of arriving at the value, little is to be said. There are no definite rules on the subject unless the statute has prescribed them, but the assessor is to value the property according to his best judgment and with honest purpose.³ "Value," it is said, "can only be de-

¹ Life Assoc. v. Board of Assessors, 49 Mo. 512.

² See Capital City Water Co. v. Board of Revenue, 92 Ala. 380; Ballerino v. Mason, 83 Cal. 447; Willis v. Crowder, 134 Ind. 515; First Nat. Bank v. Bailey, 16 Mont. 135; State v. Osborn, 60 Neb. 415; Wallace v. Bullen (Okl.), 54 Pac. Rep. 974. Real estate must be assessed for taxation at its full value, and the amount of a debt secured by mortgage thereon cannot be deducted therefrom: Territory v. Delinquent Tax-list (Ariz.), 24 Pac. Rep. 182. The limit of valuation for taxation is the actual cash value, and any assessment in excess thereof is to such extent void: Webb v. Renfrow, 7 Okl. 198. In an action to enjoin an assessor from increasing the assessed valuation of personalty liable to taxation, the actual value is fixed by a finding that the property is worth a certain amount to the owner: Willis v. Crowder, 134 Ind. 515. An averment that the "actual value" of certain lands "for agricultural purposes" never exceeded a certain amount expresses a standard of valuation different from that of a statute providing that "all taxable property must be assessed at its full cash value," and defining such value to be "the amount for which the property would be taken in payment of a just debt due a solvent debtor:" Ballerino v. Mason, 83 Cal. 447. A finding that a specified sum is, as to

certain personalty, "its fair value for taxation as compared with other property and choses in action of a similar kind and character in said township," does not fix either its fair cash value or its actual value, as contemplated by the Indiana statute: Willis v. Crowder, *supra*. An arrangement by a board of review that land of all or part of a township shall be assessed at a uniform value is invalid; each parcel must be assessed at its true cash value so as to protect the purchaser: Auditor-General v. Ayer, 122 Mich. 136. The valuation of real property by assessors at "what it would have sold right off then and there" is a substantial compliance with a statute requiring that it shall be valued "at full value which could ordinarily be obtained therefor at private sale:" Webster-Glover Lumber, etc. Co. v. St. Croix County, 63 Wis. 647. Under a statute providing for a collateral-inheritance tax, the assessment should be upon the fair market value, and not the assessed value of property fixed for the purposes of taxation: In re McGhee's Estate, 105 Iowa 9.

³ An arbitrary assessment of lands according to locality, and without actual view, is void: Hersey v. Supervisors, 37 Wis. 75. See Woodman v. Auditor-General, 52 Mich. 28. But under a statute requiring an assessment to be made either from actual view or from the best information

terminated by the ordinary selling and buying prices, for cash, at the time;"¹ a criterion which, it is safe to say, is seldom applied, and which, in many cases, could not be applied. "Generally speaking, when a statute requires the 'fair cash value' of property on a certain day to be ascertained, it refers to the actual judgment of the public as expressed in the price which some one will pay, not to what the court at a later time may think would have been a wiser opinion. It means the highest price that a normal purchaser, not under peculiar compunction, will pay at that time to get that thing."² "Just value is the market value, or the price which the property will bring in a fair market, after fair and reasonable efforts have been made to find the purchaser who will pay the highest price

practically obtainable, the mere fact that an excessive assessment was made without actual view does not invalidate it: *Boorman v. Juneau County*, 76 Wis. 550. An assessor is not required to perform impossibilities—he need not, for example, examine personally or by agent each parcel of land in a township consisting of nine surveyed townships, several of which are wilderness,—and in the absence of evidence that he acted fraudulently, or that the owner was damaged, an assessment of "uncut" lands uniformly throughout the township at \$6 per acre, and the "cut" lands at \$1.50 per acre, will be sustained, although the lands in but two of the surveyed townships were actually viewed: *Peninsula Iron, etc. Co. v. Crystal Falls T'p*, 60 Mich. 510. Where the statutes provide that certain bridges are to be assessed as "real estate," and that assessors shall actually view and determine, as near as practicable, the fair cash value of real estate listed for taxation, the assessor need not employ bridge experts for the purpose of ascertaining the value of a bridge: *Keokuk & H. B. Co. v. People*, 161 Ill. 514. Under a statute requiring commissioners to assess real estate

as they would appraise the same in payment of a just debt due from a solvent debtor, it is their duty to assess it at its actual value, upon estimates directly made; and, in the absence of evidence to the contrary, it will be presumed that they have done so: *People v. Parker*, 146 N. Y. 304. In making valuations assessors have no business to be influenced by petitions: *Attorney-General v. Supervisors*, 42 Mich. 72.

¹ *Caruthers, J.*, in *Brown v. Greer*, 3 Head 695, 697.

² *National Bank of Commerce v. New Bedford*, 175 Mass. 257, citing *Bradley v. Hooker*, 175 Mass. 142. The former case holds that a statute providing that shares of stock in banks shall be assessed at their fair cash value on a certain day means the public market price of the stock on that day. In estimating, for the purpose of the inheritance-tax, the fair market value of railroad stocks, it is proper to take the figures of any actual sales of such stocks made at the stock exchange, though such sales were made in much smaller quantities than the amount belonging to the estate: *Walker v. People*, 192 Ill. 106.

for it.”¹ In another case the court, after remarking “It is common knowledge that what a thing has cost is no infallible criterion of its market value,” adds: “But the cost of construction and acquisition, though not an incontestable evidence of exchangeable value, is, nevertheless, almost always an important particular in the mass of circumstances laying the basis of a rational judgment touching the value of anything as an article of sale.”² The income-producing capacity of property is also an important factor in determining its value.³ In valuing land which is to be assessed as one parcel, the estimate should be of the whole, and not of parts separately and then added together.⁴ And it is held that the aggregate value of land and the buildings thereon should be the full and fair

¹ *Winnipiseogee Lake, etc. Manuf. Co. v. Gilford*, 67 N. H. 514.

² *Central R. v. State Board*, 49 N. J. L. 1. The cost of constructing an electrical railway is not a proper basis for assessing its value, where it appears that more than one-half the sub-ways are unoccupied, that the business of the owner has not been profitable, as is shown by the fact that its stock has never paid any dividends, and that it is in default in the interest on its bonds: *People v. Barker*, 7 App. Div. 27, 39 N. Y. Supp. 776. Proof of extravagance in the construction of a building, so that the cost was not a proper test of its value when assessed, held to justify a reduction of the assessment: *New Orleans Cotton Exchange v. Board of Assessors*, 39 La. An. 95. Under a statute providing that in hearing objections to valuations fixed by the assessor evidence as to the property's market value and its average annual yield only shall be received, the cost of its construction several years before cannot be considered: *State v. Bienville Water Supply Co.*, 89 Ala. 325. Statement, based on construction account, as carried on corporation's books, and not an actual valuation, held not an estoppel against claiming an excess-

ive valuation of mill machinery: *Troy Cotton Co. v. Fall River*, 167 Mass. 517. True value of line of telegraph company obtained by taking cost of production of poles, wires, and other apparatus which are in their nature personalty, and adding thereto the value of the company's interest in the land on which the poles stand, and of the right to erect the poles thereon: *People v. Dolan*, 126 N. Y. 166. See, also, as to cost as indicating value, *ante*, p. 699.

³ *Adams Express Co. v. Ohio State Auditor*, 166 U. S. 185, 220; *State v. Jones*, 51 Ohio St. 513; *State v. Halliday*, 61 Ohio St. 352; *People v. Weaver*, 34 Hun 321; *People v. Keator*, 36 Hun 592. In determining the value of the telephones owned by the patentee and leased, the officer should consider every circumstance bearing on the question, and among them the earnings of such instruments: *State v. Halliday*, *supra*. Proof of a diminution of rents considered in reducing an assessment: *New Orleans Cotton Exchange v. Board of Assessors*, 39 La. An. 95. As to earnings or income as evidencing value, see, also, *ante*, pp. 687, 691.

⁴ *State v. Abbott*, 42 N. J. L. 111. See *Robertson v. Anderson*, 57 Iowa 165.

cash value of the whole parcel as of the time when the valuation is made, considered with reference to all practicable uses to which the land, with the buildings, can be put.¹ In appraising a water-power for taxation, the assessor may consider all facts affecting the value — the original cost of the entire property, the quantity of land flowed, the magnitude of the power, the places where it may be used, the limitations upon its use, the income derived by way of rents, the expenses of maintaining it, or anything which might justly affect the judgment of a person desiring to purchase it.² When land is assessed for taxation, the probability that a projected railroad may not be built, in which event the land would be comparatively worthless, cannot be considered.³ Under a statute providing that state property held under lease shall be considered for all purposes of taxation as the property of the person holding it, school lands cannot be assessed against the lessee at the value of the land, but only at the value of the leasehold, determined by what it would bring at fair voluntary sale.⁴ Under a statute requiring property to be taxed at its true value, one who holds a mortgage securing a bond conditioned for the payment to himself of a certain sum at the death of a person who has a life-interest in such sum, should only be assessed for the true value of his interest based upon such per-

¹ Tremot & S. Mills v. Lowell, 163 Mass. 283. If the land, buildings, and machinery of a mill are in the aggregate more valuable when used together for mill purposes than when separated, and all are owned by the same lessor, each should be assessed at its full value in connection with the others, though the land, if the buildings and machinery were removed, would be more valuable for other purposes: Troy Cotton, etc. Co. v. Fall River, 167 Mass. 517. Where one part of a building is exempt from taxation it is not error for the assessor to estimate the entire value, and, after deducting the exempt part, to assess the amount remaining of the estimated value: Auburn v. Young Men's Christian Assoc. 86 Me. 244.

² Winnipiseogee Lake, etc. Manuf.

Co. v. Gilford, 64 N. H. 337. That property situated in Massachusetts is benefited by reservoir rights arising out of lands situated in New Hampshire may be considered in arriving at the value of those rights for the purpose of taxation in the latter state: Ibid. Land in Massachusetts is to be assessed at its value as enhanced by the ownership and use of water-power appurtenant to it and mill buildings thereon: Lowell v. Commissioners, 152 Mass. 372. In Maine water-power is potential and not taxable except indirectly in the valuation of mills with which it is used: Union Water Power Co. v. Auburn, 90 Me. 60.

³ Union Ins. Co. v. Board of Supervisors, 67 Miss. 614.

⁴ Daugherty v. Thompson, 71 Tex. 192.

son's expectancy of life as shown by the table of mortality.¹ Additional points concerning the ascertainment of value for assessment will be found in the cases cited in the margin.²

Money, being itself the standard of valuation for all taxable property, cannot be assessed for more than its legal value.³

Where the statute provides that the owner of assessed property admitting its liability to taxation but disputing the amount of the assessments may have a re-valuation, should he fail to obtain such re-valuation the assessment becomes final as to valuation.⁴

Conclusiveness of valuation. As a general rule "each annual assessment of property for taxation is a separate entity, distinct from the assessment for the next and subsequent years. What may be a proper valuation one year may not be the next year, and thus a judgment decreeing at what figure a piece of property should be assessed last year for purposes of taxation is not *res adjudicata* as against another valuation placed thereon by the proper authorities this year."⁵ In New York, however, in the absence of evidence of an increase of value, or of some changes affecting the assessable value, former adjudications fixing assessments for preceding years at the same sum

¹State v. Vansyckle, 49 N. J. L. 366.

²Alabama Mineral L. Co. v. Commissioners' Court, 95 Ala. 105; People v. Hastings, 29 Cal. 449; Beeson v. Johns, 59 Iowa 166; Owensboro & N. R. Co. v. Logan County (Ky.), 11 S. W. Rep. 76; New Orleans Cotton Exchange v. Board of Assessors, 39 La. An. 95; Morgan's L. etc. Co. v. Board of Reviewers, 41 La. An. 1156; Haven v. Essex County Court, 155 Mass. 467; Detroit Citizens' St. R. Co. v. Common Council, 125 Mich. 673; Union Ins. Co. v. Board of Supervisors, 67 Miss. 614; Atlantic, etc. R. Co. v. State, 60 N. H. 133; State v. Ferris, 23 N. J. L. 546; State v. Randolph, 25 N. J. L. 427; Oswego Starch Factory v. Dolloway, 21 N. Y. 449; People v. Dolan, 36 N. Y. 59, 62; People v. Ferguson, 38 N. Y. 89; People v. Barker, 48 N. Y. 70; People v. Clapp, 152 N. Y. 490; In re Nisbet, 165 N. Y. 605;

People v. Coleman, 59 Hun 621; People v. Reed, 64 Hun 553. As to valuing land on navigable waters, see State v. Carragan, 37 N. J. L. 264; New York, etc. R. Co. v. Yard, 43 N. J. L. 632. The privilege possessed by a corporation of securing from the state a conveyance in fee of the lands naturally under water, lying in front of the land owned by such corporation, must be considered as an element of value in taxing the land: New York, L. E. etc. R. Co. v. Hughes, 46 N. J. L. 67. When property subject to stamp duty is to be valued at the purchase price, the cost of stamp is to be included in the price: Lehman v. Grantham, 78 N. C. 115.

³State v. Thomas, 16 Mich. 86.

⁴State v. Tennessee Coal, etc. Co., 94 Tenn. 295.

⁵Liquidating Com'rs v. Tax-Collector, 106 La. 130.

are binding upon the assessors upon a review of their assessment for the third year;¹ and in New Hampshire assessors are not authorized to disturb the valuation of land as established by a judgment of the appellate court.²

Omission of dollar-mark. There are some cases in which it has been held that the omission of the dollar-mark as a prefix to the figures which represent the value of the property in the assessment roll will render the assessment nugatory; there being nothing in its absence by which to determine what the figures indicate.³ Other cases hold that the defect is not fatal,⁴ especially where the position of the figures or some other fact indicates the meaning of the numerals.⁵

Authentication of assessment. The result of the action of the assessors is embodied in an assessment roll or list. The

¹ *People v. Carter*, 119 N. Y. 558. The fact that judgments based on assessments for two preceding years fixed them at the same sum, held not to bind the assessors on the third year, the assessors not being the same, and material changes in the value of the town's property having taken place: *People v. Zundel*, 157 N. Y. 513.

² *Winnipiseogee Lake, etc. Manuf. Co. v. Laconia*, 68 N. H. 284. But a judgment fixing the value of real estate for taxation in 1884, while admissible as evidence of its value in subsequent years, is not conclusive of its value in 1890 or subsequently; and in a proceeding to determine its value at that time, evidence of the price at which it was sold in 1889 is admissible: *Winnipiseogee Lake, etc. Manuf. Co. v. Gilford*, 67 N. H. 514.

³ *Braley v. Seaman*, 30 Cal. 610; *People v. Savings Union*, 31 Cal. 132; *Emeric v. Alvarado*, 90 Cal. 444; *McClellan v. District of Columbia*, 7 Mackey 94. And see *People v. Empire, etc. Co.*, 33 Cal. 171; *Tilton v. Railroad Co.*, 3 Sawy. 22.

⁴ *Jenkins v. McTigue*, 22 Fed. Rep. 148; *Cahoon v. Coe*, 52 N. H. 518, 524;

Ensign v. Barse, 107 N. Y. 329; *Chamberlain v. Taylor*, 36 Hun 24; *Hopkins v. Young*, 15 R. I. 48; *Spokane Falls v. Browne*, 3 Wash. 84. And see *People v. Owyhee Co.*, 1 Idaho 420; *New Orleans v. Day*, 29 La. An. 416; *Bird v. Perkins*, 33 Mich. 28; *First Nat. Bank v. St. Joseph*, 42 Mich. 526; *State v. Eureka, etc. Co.*, 8 Nev. 15.

⁵ *San Luis Obispo County v. White*, 91 Cal. 432; *Walker v. District of Columbia*, 6 Mackey 352; *Midland R. Co. v. State*, 11 Ind. App. 433; *Ward v. Board of Com'rs*, 12 Mont. 23; *State v. Sadler*, 21 Nev. 13. A special assessment roll did not show by words or signs that the figures showing the amount of the assessment indicated dollars; but this, on error to a judgment of the county court for the same amount, expressed in dollars, was held immaterial, it being presumed that the county court decided from some legitimate source of information that the figures in the roll indicated dollars: *Linck v. Litchfield*, 141 Ill. 469. The abbreviation "dolls" is equivalent to the word "dollars" in an assessment for taxes: *Salisbury v. Shirley*, 66 Cal. 223.

statutes provide how this shall be authenticated, and as the purpose is to supply record evidence that in the performance of their duty the assessors have obeyed the law, compliance with the statutory direction has generally been held imperative.¹ Where, therefore, the statute required the roll to be signed, and a certificate to be attached, the signing of the certificate was held not to dispense with a signing of the roll, and if that was not signed, no proceedings could be taken upon it.² The failure to attach the certificate or other statutory verification would be still more plainly a failure to comply with the statute in its essentials, the verification in express terms being, more obviously, a matter of substance than the signing.³ If

¹ *Griggs v. St. Croix County*, 20 Fed. Rep. 341; *Bensinger v. District of Columbia*, 6 Mackey 285; *Warren v. Grand Haven*, 30 Mich. 24; *Grand Rapids v. Blakely*, 40 Mich. 367; *Crooks v. Whitford*, 47 Mich. 283; *Hamilton, etc. Co. v. L'Anse T'p*, 107 Mich. 419; *Howard v. Heck*, 88 Mo. 156; *Burke v. Brown*, 148 Mo. 309; *Morrill v. Taylor*, 6 Neb. 236; *Lyman v. Anderson*, 9 Neb. 367; *Hallo v. Helmer*, 12 Neb. 87; *McNish v. Perrine*, 14 Neb. 382; *McClure v. Warner*, 16 Neb. 447; *Tunbridge v. Smith*, 48 Vt. 648; *Bundy v. Wolcott*, 59 Vt. 665. Unsigned assessment roll held not confirmable by common council of city: *Thompson v. Detroit*, 114 Mich. 502. List of supplemental assessments should be authenticated by assessors' signatures: *Topsham v. Purinton*, 94 Me. 354.

² *Sibley v. Smith*, 2 Mich. 486. See, also, *Colby v. Russell*, 3 Me. 227; *Foxcroft v. Nevens*, 4 Me. 72; *Kelly v. Craig*, 5 Ired. 194; *Johnson v. Elwood*, 53 N. Y. 431; *Walker v. Burlington*, 56 Vt. 131. Omission to sign the roll (the certificate upon and referring to the roll, being signed) may be cured retrospectively by statute: *Ensign v. Barse*, 107 N. Y. 329. As to what is a sufficient signing, see *Darmstetter v. Moloney*, 45 Mich. 621. Signature of majority sufficient:

Chicago & N. W. R. Co. v. People, 173 Ill. 617; *Mills v. Richland T'p*, 72 Mich. 100; *Drew v. Morrill*, 62 N. H. 23; *Bundy v. Wolcott*, 59 Vt. 157. But not where joint action by three is required, as in case of special assessment for a local improvement: *Adcock v. Chicago*, 160 Ill. 611; *Harrison v. Chicago*, 163 Ill. 129; *Moore v. Mattoon*, 163 Ill. 622; *Larson v. People*, 170 Ill. 93; *Markley v. Chicago*, 170 Ill. 358; *Phelps v. Mattoon*, 177 Ill. 169.

³ *Griggs v. St. Croix County*, 20 Fed. Rep. 341; *Bode v. New England Inv. Co.*, 6 Dak. 499; *Dickison v. Reynolds*, 48 Mich. 158; *Newkirk v. Fisher*, 72 Mich. 113; *Hamilton v. L'Anse T'p*, 107 Mich. 419; *Ferrill v. Dickerson*, 63 Miss. 210; *State v. Cook*, 82 Mo. 185; *State v. Schooley*, 84 Mo. 447; *Pike v. Martindale*, 91 Mo. 268; *Morrill v. Taylor*, 6 Neb. 236; *Merriam v. Dovey*, 25 Neb. 618; *O'Donnell v. McIntyre*, 37 Hun 615; *Eaton v. Bennett (N. D.)*, 87 N. W. Rep. 188; *Lee v. Crawford (N. D.)*, 88 N. W. Rep. 97; *Davis v. Farnes*, 26 Tex. 296; *Reed v. Chandler*, 32 Vt. 285; *Tunbridge v. Smith*, 48 Vt. 648; *Walker v. Burlington*, 56 Vt. 131; *Bartlett v. Wilson*, 59 Vt. 23; *Bundy v. Wolcott*, 59 Vt. 665; *Marsh v. Supervisors*, 42 Wis. 502; *Plumer v. Supervisors*, 46 Wis. 163. Supple-

the statute prescribes a form for the verification, the form should be observed in all essential particulars; the assessor cannot, at discretion, substitute something else.¹ Where, there-

ment to valuation and list of assessments must have the assessor's certificate that it was omitted by mistake: *Topsham v. Purinton*, 94 Me. 354. Prematurely verified roll held void: *Westfall v. Preston*, 49 N. Y. 349; *Lee v. Crawford* (N. D.), 88 N. W. Rep. 97. Compare *Dickison v. Reynolds*, 48 Mich. 158. Where the statute allowed three days, but only up to 5 P. M., for correcting assessments, the presumption was that a certificate dated on the third day was not attached prematurely: *Yelverton v. Steele*, 36 Mich. 62. And in *People v. Turner*, 145 N. Y. 451, the verification of the roll before the date fixed for review was held to be a mere irregularity. Where the affidavit to the assessment appeared on its face to have been taken in the previous year, but was shown to have been in fact made in the year of the assessment, the error was disregarded as merely clerical: *State v. Hurt*, 113 Mo. 90. Verification after delivery of roll to supervisors but before they had acted upon the assessment, held good: *People v. Jones*, 106 N. Y. 330. Verification and oath sufficient if in any one or more of the consecutively numbered volumes making up the assessment roll: *Ward v. Brooklyn*, 53 N. Y. Supp. 41. Validity of tax not affected by fact that tax-book is bound and certified in two volumes instead of one: *Thomas v. Chapin*, 116 Mo. 396. In Vermont the verification of the annual list does not cure the failure to make oath to the quinquennial list: *Houghton v. Hall*, 47 Vt. 333. As to the effect of acquiescence in the neglect of the certificate, see *Jefferson County Com'rs v. Johnson*, 23 Kan. 717. Failure to attach a certificate to an assessment

was held not fatal where the assessor was himself a member of the board of review, and was himself required to present the assessment to the board: *Darmstetter v. Moloney*, 45 Mich. 621. In some states the omission to verify the assessment roll is regarded as an irregularity merely, which does not invalidate the assessment: *Stell v. Watson*, 51 Ark. 516; *Michigan L. S. P. Co. v. Atwood* (Mich.), 86 N. W. Rep. 139; *Chesnut v. Elliott*, 61 Miss. 539; *Merriam v. Dovey*, 25 Neb. 618; *Twinting v. Finlay*, 55 Neb. 152; *Johnson County v. Tierney*, 56 Neb. 514; *Odiorne v. Rand*, 59 N. H. 504. Omission of affidavit held to be an irregularity curable by subsequent act: *In re East Av. Baptist Church*, 57 Hun 590, 11 N. Y. Supp. 113. See *Smith v. Hard*, 61 Vt. 469. Assessor's failure to subscribe and seal oath, held not to invalidate roll: *Avant v. Flynn*, 2 S. D. 153. Where the certificate to the assessor's affidavit did not show that the town clerk administered the oath in the town in which he held office, this was not a fatal defect; the court presuming, *prima facie*, in support of the affidavit, that the officer acted within his territorial jurisdiction in administering the oath: *Lee v. Crawford*, *supra*. An affidavit to a land assessor's book held sufficient though failing to state in terms of what county affiant was assessor, or that he was assessor: *Taft v. McCulloch*, 135 Mo. 588. Oath taken before notary instead of justice of the peace, legalized by statute: *Kent v. Warner*, 47 Hun 474.

¹*State v. Seahorn*, 139 Mo. 582; *Shattuck v. Bascom*, 105 N. Y. 39; *Stebbins v. King*, 123 N. Y. 31.

fore, the statute required the assessors to certify that they had assessed the property at its true value, according to the best of their knowledge and belief, a certificate that they had assessed it "according to the usual way of assessing" was declared void.¹ The same was held of a certificate that the assessors had estimated the real estate "at a sum which, for the purposes of the assessment, we believe to be the true value thereof."² It is to be said of the action of the assessors, in these cases, that they had endeavored to make their certificate correspond to the fact; it being notorious that, whatever they may certify, they are not in the practice of estimating property at its true value.³ So when the statute required the as-

¹ Van Rensselaer v. Witbeck, 7 N. Y. 517. Compare Parish v. Golden, 35 N. Y. 462. See Hogelskamp v. Weeks, 37 Mich. 422.

² Clark v. Crane, 5 Mich. 151. See State Auditor v. Jackson County, 65 Ala. 142; Colby v. Russell, 3 Me. 227; Foxcroft v. Nevens, 4 Me. 72; Johnson v. Goodridge, 15 Me. 29; Kelar v. Savage, 20 Me. 199; Hinckley v. Cooper, 22 Hun 253; Shattuck v. Bascom, 105 N. Y. 39. Under a statute requiring the supervisor to certify that he has assessed the real estate at what he believes "to be the true cash value thereof, *and not at the price it would sell for at a forced or auction sale,*" the omission of the italicised words is fatal: Gilchrist v. Dean, 55 Mich. 244; Daniells v. Watertown T'p, 61 Mich. 514; see Westbrook v. Miller, 64 Mich. 129. And a certificate using the words "fixed or auction sale" is not sufficient: Paldi v. Paldi, 84 Mich. 346. But the omission of the word "cash" between the words "true" and "value," such word elsewhere appearing in the certificate, was held to be a clerical, not a fatal, error: Dickison v. Reynolds, 48 Mich. 159; Fay v. Wood, 65 Mich. 390. A listers' oath to the effect that they had estimated the value of the real estate at such sums as they "would appraise the same in pay-

ment of a just debt due from a solvent debtor" was held equivalent to stating that they had appraised it "at its true value in money;" Brock v. Bruce, 58 Vt. 261. Omission, after the allegation that the assessors have estimated the value at the sum decided by the majority to be its full cash value, of the words required by statute, "and at which they would appraise the same in payment of a just debt due from a solvent debtor," held to invalidate tax: Inman v. Coleman, 37 Hun 170. But the use, in the above phrase, of the term "solvent creditor," instead of "solvent debtor," is not such a defect as a retrospective statute cannot cure: Ensign v. Barse, 107 N. Y. 329. And where the above phrase was used in a certificate though omitted by an amendatory statute, the assessment was sustained on the ground that the words were mere surplusage: Sherrill v. Hewitt, 59 Hun 619, 13 N. Y. Supp. 498.

³ See Silsbee v. Stockle, 44 Mich. 461; Dickison v. Reynolds, 48 Mich. 158; Sinclair v. Learned, 51 Mich. 335. The verification of the assessment is not void by reason of omitting any part of the statutory form that in the particular case has nothing to which it would be applicable, *e. g.*, bank stock. But it is void if it

assessors in an affidavit to the assessment roll to state that "they have together personally examined within the year past each and every lot and parcel of land, house, building, or other assessable property" within the taxing district, the omission of this affidavit was held fatal.¹ But a failure to observe literally the statutory form will not vitiate the roll if there is substantial compliance.² A statute prohibiting assessors from contradicting or impeaching certificates made by them has been sustained.³ It may be added here that all legal presumptions favor an assessment.⁴

Completion of assessment: Return. An assessment is completed when the assessors have performed in respect to it their full duty under the statute.⁵ When nothing more remains to

fails to show that the valuation "is the full value which could ordinarily be obtained:" *Plumer v. Supervisors*, 46 Wis. 163; *Scheiber v. Kaehler*, 49 Wis. 291.

¹*Brevoort v. Brooklyn*, 89 N. Y. 128. For an affidavit held to be in compliance with the statutory requirement recited in the text, see *Kane v. Brooklyn*, 114 N. Y. 586.

²*People v. Mining Co.*, 39 Cal. 511; *Bradford v. Randall*, 5 Pick. 496; *Nelson v. Saginaw*, 106 Mich. 659; *State v. Seahorn*, 129 Mo. 582; *Parish v. Golden*, 35 N. Y. 462; *Buffalo, etc. R. Co. v. Supervisors*, 48 N. Y. 93; *Rome, Watertown, etc. R. Co. v. Smith*, 39 Hun 332; *Brock v. Bruce*, 58 Vt. 261. See *Bangor v. Lancey*, 21 Me. 472, where, though the statute required the list to have the official sanction of a majority of the assessors, evidenced by their signatures, the original list was not signed, but a supplementary list referring to it as containing the assessment for the year was duly signed; and this was held sufficient. Departure from the prescribed form of the oath may be cured by subsequent remedial statute, provided the right of the taxpayers aggrieved by the assessment to have their objections passed upon

is not interfered with: *Williams v. Albany County*, 122 U. S. 154.

³*Plumer v. Supervisors*, 46 Wis. 163; *Marshall v. Benson*, 48 Wis. 558. The defective character of a supervisor's certificate cannot be shown by introducing the tax-roll into which such certificate has been copied, but of which it forms no part: *Hecock v. Van Dusen*, 80 Mich. 359.

⁴*Modoc County v. Churchill*, 75 Cal. 172; *Richmond, etc. Co. v. Alamanco Com'rs*, 84 N. C. 504. An assessment and levy for general revenue purposes are always evidence of a valid tax: *Adams v. Osgood* (Neb.), 84 N. W. Rep. 257, and cases cited. It is said in *People v. McComber*, 24 N. Y. Super. Ct. 902, 7 N. Y. Supp. 71, that an assessment is presumed to be correct only until the contrary is shown. Where there is no evidence that an assessment was in any respect unequal, it will be presumed to be fair and equal: *Canfield v. Bayfield County*, 74 Wis. 60.

⁵As to when an assessment in New York is to be considered completed, see *Mygatt v. Washburn*, 13 N. Y. 316; *People v. Suffern*, 68 N. Y. 321; *People v. Clapp*, 64 Hun 547, 19 N. Y. Supp. 531. In *Montana*, *State v. Johnson*, 16 Mont. 570. In *Nebraska*,

be done by them, the assessment is to be disposed of as the statute may provide. In some states this will be by delivery to a board of review; or, if no such board is provided for, then to the officer or board by whom or by which the tax is to be apportioned upon it.¹ Where the assessors are required to certify it to the auditor, to be entered upon his duplicate, the certificate must be in writing, and the want of it cannot be supplied by parol.² If the statute names a time for the return it should be complied with; but whether a failure in strict compliance would be fatal must depend upon whether the regulation is one for the taxpayer's protection, or merely for order, regularity, or official convenience.³

Jones v. Seward County, 10 Neb. 154. In *Tennessee*, of railroad property, *Harris v. State*, 96 Tenn. 496. Completion of assessment by town assessors, inclusive therein of state tax, and commitment to collector, before issue of state treasurer's warrant; tax not avoided: *Rowe v. Friend*, 90 Me. 241. Failure to complete roll by prescribed date may be cured by subsequent statute: *Williams v. Albany County*, 122 U. S. 154. A tax is "assessed" within the meaning of a statute excepting from an exemption taxes "already assessed," although the assessment roll has not been signed or verified: *Wisconsin Central R. Co. v. Lincoln County*, 67 Wis. 478.

¹ See *Wells v. Smyth*, 55 Pa. St. 159; *Norridgewock v. Walker*, 71 Me. 181. The provision of the Vermont statute requiring listers to lodge abstracts in the town clerk's office is mandatory: *Smith v. Hard*, 59 Vt. 13. Although the Missouri statute requires the assessor of land to return to the county court "a fair copy" of the assessor's book, he is required merely to return his original book in a fair and legible condition: *State v. Lounsberry*, 125 Mo. 157. A statute requiring county clerks to transmit certified copies of the county assessment rolls to the secretary of state

does not make such certification and filing prerequisite to the equalization of the different rolls by the state board: *Dayton v. Multnomah County*, 34 Or. 239.

² *State v. Thompson*, 18 S. C. 538. See *Dent v. Bryce*, 16 S. C. 1. And compare *Darmstetter v. Moloney*, 45 Mich. 621; *Davis v. Farnes*, 26 Tex. 296.

³ Failure to deliver the assessment roll until after the expiration of the time fixed by the statute held not a fatal irregularity, the statute being regarded as merely directory, and opportunity to object to the assessment having been given: *Atlantic Trust Co. v. Darlington*, 63 Fed. Rep. 76; *Waddingham v. Dickson*, 7 Colo. 223; *Burlington Gaslight Co. v. Burlington*, 101 Iowa 458; *People v. Haupt*, 104 N. Y. 377; *People v. Jones*, 106 N. Y. 663, 43 Hun 131; *O'Neil v. Tyler*, 3 N. D. 47. On the other hand, failure to return the assessment within the legal time has been held to render it and any sale made under it void: *Watson v. Campbell*, 56 Ark. 184; *Stovall v. Connor*, 58 Miss. 138; *Mitchum v. McInnis*, 60 Miss. 945; *Fletcher v. Trewalla*, 60 Miss. 963; *Pearce v. Perkins*, 70 Miss. 276; *Carlisle v. Goode*, 71 Miss. 453; *McGuire v. Union Ins. Co.*, 76 Miss. 863; *Trenton v. Dyer*, 24 Can. S. C. R. 474. In

Unauthorized alterations. After the assessment has been completed and authenticated, certainly after it has been returned, the assessors, unless under express statutory authority, may not alter it by adding or withdrawing names or property, or by changing descriptions or valuations.¹ It is indeed said that if the determination of the assessors is to be entered of record they have judicial control of the whole subject until the entry is made, and may reconsider valuations and any other matters involved in the final decision;² but this cannot be universally true. If by statute or otherwise a day of review is fixed at which parties may appear and be heard, the purpose of the hearing would be defeated if valuations might be increased by the assessors afterwards without opportunity for taxpayers again to appear.³ Unauthorized alterations are to

Detroit Citizens' St. R. Co. v. Common Council, 125 Mich. 673, it was held that although the assessment roll in Detroit should not have been filed until after the amounts of the assessments had been fixed by the board of review, yet such filing did not, in a particular case, deprive a taxpayer of the right of review of its assessment. In Vermont failure to deposit the annual list does not invalidate the quadrennial appraisal; *Smith v. Blair*, 67 Vt. 658. An appraisal for taxation, required to be returned by a certain date, but not required to show of itself the time of its return, may be shown by parol to have been returned seasonably: *Wilmot v. Lathrop*, 67 Vt. 671.

¹*Vicksburg Bank v. Adams*, 74 Miss. 179; *State v. Gold Mining, etc. Co. (Nev.)*, 64 Pac. Rep. 3; *Sullivan v. Peckham*, 16 R. L. 525; *Lewis v. Bishop*, 19 Wash. 312. After the duties of the assessor have ceased, no judgment of a court can clothe him with power to amend, alter, or modify his assessment: *Johnson v. Malloy*, 74 Cal. 430. A county auditor cannot correct the assessment as made and returned by the assessor and approved by the board of equal-

ization; nor has the district court any original jurisdiction to correct the assessment, or to order a change in the valuation of property on the treasurer's books: *Polk County v. Sherman*, 99 Iowa 60. Where an assessment is not complete, and is undergoing direct adjudication in a suit, a misdescription therein may be shown by parol: *Vicksburg Bank v. Adams*, 74 Miss. 179. As to alteration of valuations on the roll, see *People v. S. & C. R. Co.*, 49 Cal. 414.

²*State v. Silvers*, 41 N. J. L. 505. See *State v. Crosley*, 36 N. J. L. 425.

³After an assessment has been placed upon the duplicate an additional assessment made without notice or reference is void: *Wells County Com'rs v. Fahlor*, 114 Ind. 176. So where the value of property is increased without the notice required by statute: *Apgar v. Haywood*, 53 N. Y. Super. Ct. 357. But the assessor's failure to give the statutory notice of additions is waived by appeal to the board of relief: *Quinebaug Reservoir Co. v. Union*, 73 Conn. 294. And a supplemental assessment made upon a property owner's complaint for abatement could not be objected to as without

be regarded as nullities rather than as avoiding the entire assessment,¹ although material changes and additions may be fatal to the validity of the tax-roll itself.²

One assessment for different levies. It is customary to provide by law that one assessment shall be made use of for the levy of both state and local taxes, for the year or other period of time for which assessments are made, instead of directing a separate assessment for each description of tax.³ This

authority: *Rockland v. Ulmer*, 87 Me. 357. Where the assessor informed an owner that the latter's assessment would be the same as for the previous year, but placed it at a higher amount, held fraudulent: *Landes Estate Co. v. Clallam County*, 19 Wash. 569.

¹ *St. Charles St. R. Co. v. Assessors*, 31 La. An. 852; *Brennan v. Buffalo*, 162 N. Y. 491; *Quimby v. Wood*, 19 R. I. 571; *Willard v. Pike*, 59 Vt. 202. An alteration by the assessor of the assessment book so as to give a description of improvements does not invalidate the assessment; no description of the improvements is necessary, all that is essential being a general designation of improvements with the value at which they are assessed: *Lahman v. Hatch*, 124 Cal. 1.

² *Weston v. Monroe*, 84 Mich. 341.

³ In the absence of charter provisions the commissioners of a township may adopt the assessment made for state and county purposes as the basis of the levy made by them for township purposes: *Koontz v. Hancock*, 64 Md. 134. A city may constitutionally be empowered to adopt for city purposes the appraisal of real estate made for general taxation, or to cause a new appraisal to be made; and when the general appraisal is adopted the council has no power to make changes by way of equalizing: *Jones v. Columbus*, 62 Ind. 421. In the state of

Washington the legislature may authorize the assessment of city taxes on the basis of the county tax-roll for the preceding year: *Wingate v. Ketner*, 8 Wash. 94. In Maryland a statute extending a town's boundaries may authorize the levy of a tax upon all property within such boundaries on the same assessment and valuation as for county purposes: *Williamsport v. Darby* (Md.), 29 Atl. Rep. 605. In North Carolina towns and cities are required to base their levies on assessments made for state and county purposes: *Covington v. Rockingham*, 93 N. C. 134. Municipal corporations in Alabama are prohibited by the constitution from levying a tax upon city property which has not been assessed for state purposes during the previous year: *Elyton Land Co. v. Birmingham*, 89 Ala. 477. A statute authorizing a town to make assessments for taxation for its own use is repugnant to the constitution if the provisions of the latter permit of but one assessment which is required to be made by state officers: *Germania Sav. Bank v. Darlington*, 50 S. C. 337. Where a city is authorized by statute to make assessments it may make a valid assessment of railroad property though the state board has also assessed such property under another statute: *State v. Talley*, 50 S. C. 374. Assessment of county tax on railroad property based on state assessment: *Norfolk & M. R. Co. v. Supervisors*.

is a matter as well of economy as of convenience, as one assessment answers all purposes. Independent assessments are sometimes provided for in the case of school taxes and some others, but they raise no peculiar questions, and require no special consideration.

Shifts to evade taxation. The federal revenue laws abound in provisions for circumventing and punishing frauds upon the revenue, and state legislation is not without enactments of similar nature. But it is not uncommon to encounter in the administration of tax-laws shifts and devices, not amounting to legal fraud, but which nevertheless have in view the same purpose: to avoid a just share in the burdens of public taxation. Sometimes, but not always, it is possible to defeat such attempts when the facts are known.

A man may lawfully change his residence from one municipality to another at pleasure; and though the purpose in changing be to avoid taxation in the town he removes from, yet the fact cannot be taken notice of for the purpose of continuing his taxation in that town.¹ A man has a right to exchange

87 Va. 521. Where lands were assessed under an invalid provision of a city charter, the proper valuation to be laid by the city levies was that ascertained at the last general state assessment: *Heth v. Radford*, 96 Va. 272. In Massachusetts school-district taxes may be on the town valuation, the statute not providing for any other: *Waldron v. Lee*, 5 Pick. 323. Under a charter constituting village trustees a board of assessment, and making the valuation of property in the town assessment rolls the general rule of valuation for village taxes "as far as practicable," the trustees are bound to follow the valuation in the town roll unless by reason of improvements made on, or damages occurring to, the property, there has been a change in its value since the town roll was completed: *People v. Adams*, 125 N. Y. 471. Where a statute required the selectmen to assess annually a state school tax before January 1st, but did not

specify the list on which it should be assessed, it was held that it should be assessed on the list completed and in force at the time of the assessment: *Sprague v. Abbott*, 58 Vt. 331. After the valuation of taxable property has been changed by the state board of equalization, the county commissioners can use the valuation as a basis for levies of all purposes: *Board of Com'rs v. Missouri, K. & T. R. Co. (Kan.)*, 61 Pac. Rep. 693. In Louisiana it is held that a decree relating to the value of property on assessment for the state fixes it as a basis of taxation for a municipality, and a revision as to the one is binding on the other: *City Item Co-Operative Printing Co. v. New Orleans*, 51 La. An. 713.

¹ *People v. Caldwell*, 142 Ill. 434; *Draper v. Hatfield*, 124 Mass. 53; *Thayer v. Boston*, 124 Mass. 132. See *Union S. B. Co. v. Buffalo*, 82 N. Y. 351.

money, which is taxable, for United States securities which are not taxable, even though the sole purpose in the exchange is to avoid the tax.¹ If he gives his note for United States securities for the like purpose, he is nevertheless entitled to be allowed the amount of the note in reduction of his assessment.² And if the owner of personalty changes it into real estate, and then executes leases for years thereon in order to avoid taxation on such personalty, the assessment must nevertheless be governed by the legal position of the property at the time it is made.³ In each of these cases the party is only exercising a right which the law allows to him; he may choose his own place of residence at pleasure, and he may select, as seems most for his interest, between taxable and non-taxable property; and it is no concern of others, or even of the state which by its laws allows the choice, what may be the motive on which he acts.

Where, however, under the revenue laws land is taxable and also a mortgage upon it, if one from whom money is obtained, instead of taking a mortgage for the amount, takes an absolute conveyance and gives back a lease with a stipulation to sell back the land on repayment of the money and interest — the whole transaction being obviously only a loan and the taking of security therefor, — the land may still be taxed to the borrower and the lender taxed as mortgagee.⁴ Where a taxpayer borrowed \$1,000 from a resident of another county, and deposited in the lender's hands securities to the amount of \$12,000, it was held that if this was done in good faith and merely to secure payment of the debt, the securities were not taxable in the county of the borrower's residence; but if they were transferred for the purpose of avoiding taxation, then the transaction was in bad faith and a fraud on the revenue of the county, and the securities might be taxed at the borrower's home as

¹ *Stilwell v. Corwin*, 55 Ind. 433. retention was to evade taxation:
See *Ogden v. Walker*, 59 Ind. 460. *Griffin v. Heard*, 78 Tex. 607.

Treasury notes accumulated by a bank as part of its reserve by retain-
² *People v. Ryan*, 88 N. Y. 142.

ing such notes when received over
³ *People v. McComber*, 24 N. Y.
its counter, and paying out other
Super. Ct. 902, 7 N. Y. Supp. 71.

money, are exempt from taxation,
⁴ *Waller v. Jaeger*, 39 Iowa 228;
though one of the purposes of such
Lappin v. Nemaha County, 6 Kan.
403; *Patrick v. Littell*, 36 Ohio St. 79.

if the transaction had not taken place.¹ And where one whose estate consisted chiefly of bonds and mortgages assigned them to one of his children, a non-resident daughter, before the day when his taxable *status* became fixed, but retained possession of the securities and received interest on them, it was held proper to assess them as the assignor's property.² But this conclusion in each case was reached by the court's claiming and exercising the right to look beyond the surface facts and inquire into the real nature of the transaction in question, that it might be dealt with as it was in fact, and not as it had for improper purposes been made to appear.³

So it has been held in Mississippi, that where the capital of a banking corporation, used in its daily business and necessary to its profitable conduct, was converted, a few days before the assessment, into non-taxable securities, in which form it would not be available for daily use, and the express purpose was to evade taxation and then immediately reconvert into money when the day of assessment was passed, the capital was still taxable under the law as if the conversion had not taken place, the court saying: "There still remains power in the county to investigate whether the holding is actual and *bona fide*, or colorable only and fraudulent. If held in the latter aspect, and

¹ Poppleton v. Yamhill County, 8 Or. 337.

² People v. Sawyer, 56 N. Y. Super. Ct. 760, 27 N. Y. Supp. 202. While one may lawfully dispose of his property to avoid taxation, a mere manipulation under the guise of disposition, the only effect of which is to avoid the tax, will not be upheld: Ransom v. Burlington, 111 Iowa 77.

³ See People v. Albany Ins. Co., 92 N. Y. 458. Whether a resolution of the directors of a national bank declaring a dividend payable out of the surplus, to be placed to stockholders' credit, and to remain as a deposit until otherwise ordered, was made in good faith or was a mere subterfuge to avoid taxation, was a question of fact to be determined by the trial court: Pollard v. First Nat. Bank, 47 Kan. 406. A corporation from which

taxes are due cannot defeat collection of them by vesting its taxable property in another corporation of which it remains a constituent part: Bloxham v. Florida Cent. R. Co., 35 Fla. 625. A New York corporation the receipts of which are taxable in Pennsylvania cannot escape taxation thereon by sending them to New York: Delaware & H. Canal Co. v. Commonwealth (Pa.), 17 Atl. Rep. 175. A colorable sale of a strip off of the front of a duly platted and recorded city plat, made with the intent of avoiding a betterment tax about to be assessed against the lot, will not operate to exempt it: Stifel v. Brown, 24 Mo. App. 102. And see Ransom v. Burlington, 111 Iowa 77; Loud & Sons Lumber Co. v. Elmer T'p, 123 Mich. 61.

as a mere representative of property temporarily concealed, which is to be uncloaked as soon as the visit of the tax assessor shall have been made, the courts will look through the sham and measure the rights of the parties by the real nature of the transaction."¹ Similar decisions have been made in other states.²

When a party seeks affirmative relief in equity his motives may always be inquired into for the purpose of determining whether his case is deserving of favor; and, therefore, affirmative relief against a tax may sometimes be refused when, perhaps, at law it would not be enforceable. Where a resident withdrew his money from deposit the day before that for making the assessment, converted it into United States notes, and then as soon as the day was past deposited these notes in bank to his general credit, the whole being a palpable device to avoid taxation, but was nevertheless taxed upon the money, and brought suit in equity to restrain collection, his bill was dismissed with little ceremony, the court remarking that a court of equity would not use its extraordinary powers to promote any such scheme as the plaintiff had devised, to escape his proportionate share of the burdens of taxation. If he had any remedy, he must find it in a court of law.³

It has been held that where a taxpayer fraudulently conceals a large part of his property from the assessor, and thus avoids paying taxes upon it, the county cannot maintain an action against him or his estate to recover the amount of tax which he should have paid.⁴ And statutes providing for the assessment, at a multiple of its value, of property which has been concealed or misrepresented to evade taxation, or which has been discovered to have escaped taxation, do not apply where property in a preceding year has, because of misrepresentation, been assessed too low.⁵

¹ *Holly Springs, etc. Co. v. Supervisors*, 52 Miss. 281, 289.

² *State v. Assessor*, 37 La. An. 850; *Jones v. Seward County*, 10 Neb. 154; *Dixon County v. Halstead*, 23 Neb. 697.

³ *Mitchell v. Commissioners*, 9 Kan. 344, 91 U. S. 206. See *Albany Bank v. Maher*, 19 Blatch. 175, 182. It has been held by the supreme court of the United States that one who re-

sorts to the device mentioned in the text cannot object to having the amount of his account assessed under an appropriate statute of the state: *Shotwell v. Moore*, 129 U. S. 590. See, also, *Crowder v. Riggs*, 153 Ind. 158; *Durham v. State*, 6 Ind. App. 23.

⁴ *Appanoose County v. Vermillion*, 70 Iowa 365.

⁵ *Clunie v. Siebe*, 112 Cal. 593.

Review of assessments. Where a statutory board is provided for, which is to review the work of the assessors, the purpose may be either to examine individual assessments with a view to the correction of errors and inequalities,¹ or to examine the assessments as a whole with a view to determine whether they are relatively equal as between different parts of a district within which a tax is to be laid, and if not, to make them so by increasing those which are too low or diminishing those which are too high. This process is called equalization, and is resorted to in order to make the valuation of counties proportionate when a state tax is to be levied, and those of townships and cities proportionate when a county tax is to be levied.² It has been held that a board of county commissioners required to meet in each year for the purpose of examining the assessment book and equalizing the value of taxable property within the county, is responsible for the correctness of the assessment book, and cannot plead inability to ascertain therefrom the taxable property within the county, or the names of the owners.³

The right, if conferred by the law, to have an assessment reviewed is one of which an owner should not be deprived,⁴ and

¹ An improper assessment does not render invalid a tax-deed based thereon, the taxpayer's remedy being by complaint to the county board of equalization: *Duggan v. McCullough*, 27 Colo. 43. A taxpayer who fails to appeal from an assessment is concluded thereby: *Yazoo Delta Ins. Co. v. Suddoth*, 70 Miss. 416. As to the proceedings in Ohio before a county auditor for the correction of returns, see *State v. Raine*, 47 Ohio St. 447; *Gager v. Prout*, 48 Ohio St. 89; *Ohio Farmers' Ins. Co. v. Hurd*, 59 Ohio St. 248. Where bank stock is erroneously assessed to the bank instead of to the shareholders, the board of equalization may correct the assessment: *First Nat. Bank v. Bailey*, 15 Mont. 301.

² "Equalize" means to make equal to, to cause to correspond or be alike in manner or degree: *Bardrick v. Dillon*, 7 Okl. 535; *Wallace v. Bullen* (Okl.), 54 Pac. Rep. 974. Equaliza-

tion is simply an ascertainment of the average between values already found: *Gray v. Stiles*, 6 Okl. 455. "Equalization of taxes is one step in their levy and collection:" *Ladd v. Gibson* (Wash.), 66 Pac. Rep. 126.

³ *State v. Board of Com'rs*, 12 Mont. 503. As to what will show an approval of assessment roll by board, see *Gwynn v. Richardson*, 65 Miss. 222; *Mixon v. Clevenger*, 74 Miss. 67.

⁴ Thus a *mandamus* to compel the placing of certain property on the assessment roll will be denied if applied for so late as to deprive the owners of the right to have their assessments reviewed: *Maurer v. Cliff*, 94 Mich. 194. A taxpayer cannot complain because of the omission of a review which was evidently directed only to determine as between him and the state whether he had performed his duty: *Wolfe v. Murphy*, 60 Miss. 1. Evidence held insufficient to sustain the objection that

it may be essential to the validity of the assessment.¹ It has, however, been held that the omission to have an assessment of real property reviewed and equalized by the county board will not affect or invalidate the taxes upon such property, where the owner does not claim that such omission has prejudiced him, or that the taxes against the property have been partially, unfairly, or unequally assessed.²

Powers of board. These tribunals are mere creatures of the statute, and must look to it for all their powers.³ A presumption of correct action will attend what they do, and give *prima facie* support to their conclusions when apparently warranted by law,⁴ but this presumption is not conclusive in any case. Of

person was unable to procure information as to the valuation of his property in time to present his objections to the board of review: *Hulbert v. People*, 189 Ill. 114. One cannot claim that an assessment was not properly reviewed where his assignor, the only person interested in such assessment at the time the board of review met, was satisfied therewith: *Hamilton v. Ames*, 74 Mich. 278.

¹ Where a statute provided for re-assessments, and for a board to hear appeal therefrom, which board never met or organized, re-assessments under the act were held void: *Slaughter v. Louisville*, 89 Ky. 112. And where, because of a board's not meeting at the time fixed by statute, or because of its making an illegal adjournment, a taxpayer was denied a hearing, the tax is void as to him: *Caledonia T'p v. Rose*, 94 Mich. 216; *Auditor-General v. Chandler*, 108 Mich. 569; *Hutchinson v. Omaha*, 52 Neb. 345; *Powers v. Larabee*, 2 N. D. 141. See *Burlington Gas-Light Co. v. Burlington*, 101 Iowa 458.

² *Scott County v. Hinds*, 50 Minn. 204.

³ See *Orr v. State Board*, 2 Idaho 923; *State v. Allan*, 43 Ill. 456; *People v. Nichols*, 49 Ill. 517; *Darling v. Gunn*, 50 Ill. 424; *McKee v. Cham-*

paign Supervisors, 53 Ill. 477; *Coolbaugh v. Huck*, 86 Ill. 600; *Kimball v. Merchants', etc. Co.*, 89 Ill. 61; *Workingmen's Banking Co. v. Wolff*, 150 Ill. 491; *People v. Board of Com'rs*, 176 Ill. 576; *Cleveland, C. C. & St. L. R. Co. v. Board of Com'rs*, 19 Ind. App. 58; *Taylor v. Moore*, 39 Iowa 605; *Royce v. Jenney*, 50 Iowa 676; *Getchell v. Supervisors*, 51 Iowa 107; *Dickey v. Polk County*, 58 Iowa 287; *Avery v. East Saginaw*, 44 Mich. 587; *State v. Cunningham*, 153 Mo. 642; *Sioux City, etc. R. Co. v. Washington County*, 3 Neb. 30; *State v. Washoe County*, 3 Neb. 30; *Grant v. Bartholomew*, 58 Neb. 839; *State v. Carragan*, 37 N. J. L. 264; *State v. Anderson*, 38 N. J. L. 173; *Gray v. Stiles*, 6 Okl. 455; *Dalton v. East Portland*, 11 Or. 426. The board of equalization in Oregon is empowered to correct all errors of assessment — as well those where the property or rights are not the subject of taxation as those where the assessment is unequal or excessive: *Altschul v. Gittings*, 86 Fed. Rep. 200. But it is not authorized to determine whether property on the assessment roll is exempt from taxation: *University v. Multnomah County*, 31 Or. 498.

⁴ *Monroe v. New Canaan*, 43 Conn. 309; *Adams v. Osgood (Neb.)*, 84 N.

course the board of review cannot acquire jurisdiction to tax property not in the state and belonging to a non-resident.¹

Meetings of board. As in other cases of boards composed of two or more persons, these must act in regular meetings;² such meetings must be held upon the notices,³ at the times,⁴

W. Rep. 267; *Tainter v. Lewis*, 29 Wis. 375.

¹ *Maxwell v. People*, 189 Ill. 546. Where a property owner claims his personalty to be exempt from taxation, upon the ground that he is a non-resident and has no personalty in the state, and the board of review sustains his claim in accordance with the evidence, but the auditor neither notifies the board of his approval of the decision nor presents the case to the supreme court, the county court should sustain the objection when made to the judgment of sale: *Maxwell v. People*, 189 Ill. 591. A property owner is not required to appear before the taxing board to oppose an assessment on property situated out of its jurisdiction: *Sioux City Bridge Co. v. Dakota County* (Neb.), 84 N. W. Rep. 607. But one who complains that a board of equalization has no jurisdiction of himself or his property so as to regulate the taxation of the latter has the burden of proving facts showing the want of jurisdiction: *King v. Parker*, 73 Iowa 757. An assessment by a board having power to decide what property is assessable and determine its value is not void because it erroneously includes property outside of the board's territorial jurisdiction: *Youngstown Bridge Co. v. Kentucky & I. Bridge Co.*, 64 Fed. Rep. 441.

² See *ante*, pp. 442, 443. An assessment roll may be valid if approved afterwards although the first attempt to approve it was at an unauthorized meeting: *Cato v. Gordon*, 63 Miss. 320; *Yazoo Delta Inv. Co. v. Suddoth*,

70 Miss. 416; see *Morgan v. Blewett*, 72 Miss. 903. Where there is no proof that the board of equalization did not hold an annual session as required by law, the presumption is that it did: *Adams v. Osgood* (Neb.), 84 N. W. Rep. 267. Further as to meetings, see *People v. Board of Review*, 178 Ill. 348; *Gillett v. Lyon County*, 30 Kan. 166; *Hallo v. Helmer*, 12 Neb. 87; *Wolfe v. Murphy*, 60 Miss. 1.

³ See *Slaughter v. Louisville*, 89 Ky. 112; *Equitable Trust Co. v. O'Brien*, 55 Neb. 735; *Wakeley v. Omaha*, 58 Neb. 245. A notice of a sitting of the common council as a board of equalization to consider a special assessment is sufficient if it complies substantially with the statute: *Medland v. Linton*, 60 Neb. 249. The mere omission of the records of a village council to show proof of the posting of the notices of the meeting of the board of review as required by statute does not avoid an assessment: *Boyce v. Peterson*, 84 Mich. 140. Provision requiring notice of meeting of board of review to be printed in each of the public newspapers printed in the city does not require publication in a newspaper printed in a foreign language: *Auditor-General v. Hutchinson*, 113 Mich. 245. One who has had actual notice of, and who has attended and been fully heard as to his own assessment, at a meeting of the board of review cannot object that the statutory notice of the meeting was not given: *State v. Gaylord*, 73 Wis. 306.

⁴ See *Wiley v. Flournoy*, 30 Ark. 609; *Workingmen's Banking Co. v. Wolff*, 150 Ill. 491; *Highland v. Brazil*

and in the places,¹ that have been prescribed by the law; and all the members must have opportunity to attend.² To the legality of any meeting not in terms required by the statute, there must, therefore, be special notice to all the members;³ though if all attend without notice and proceed to business it may be sufficient.⁴ Acts of two members of a board of equalization are valid without the third member's co-operation.⁵ A board cannot, however, delegate its authority to two of its members,⁶ though it may make use of committees to hear complaints or to consider anything falling within its

Block Co., 128 Ind. 335; *Yocum v. First Nat. Bank*, 144 Ind. 272; *Caledonia T'p v. Rose*, 94 Mich. 216; *Auditor-General v. Chandler*, 108 Mich. 569; *Hutchinson v. Omaha*, 52 Neb. 345; *State v. Central Pac. R. Co.*, 21 Nev. 270. Statutory provisions as to time of meeting, or limit of time, held directory merely, and proceedings sustained: *Burwell v. Board of Supervisors*, 116 Cal. 351; *Faribault Water-works Co. v. County Com'rs*, 44 Minn. 12; *People v. Turner*, 145 N. Y. 451; *Powers v. Larabee*, 2 N. D. 141; see *Wright v. Auditor-General*, 118 Mich. 556. Presumption that meeting, though not at a time authorized for a regular meeting, was legal, in absence of proof that it was not a special meeting such as might legally have been called and held at the time it was held: *Tierney v. Brown*, 65 Miss. 563. Computation of time where session limited to certain number of days: *Yocum v. First Nat. Bank*, 144 Ind. 272. Under the Kansas tax-law county boards of equalization are authorized to act in odd as well as in even years: *Atchison, Topeka, etc. R. Co. v. Wilson*, 35 Kan. 175.

¹See *Caledonia T'p v. Rose*, 94 Mich. 216; *Yazoo Delta Inv. Co. v. Suddoth*, 70 Miss. 416. Statute requiring the board of equalization to meet at the city assessor's office held to have been complied with: *Tampa v. Mugge*, 40 Fla. 326. A county

board of equalization required to meet, on a certain day, in the county clerk's office, was held to have the right to meet at the branch county clerk's office established by statute in a city where the records of proceedings there had are to be kept: *State v. Vaile*, 123 Mo. 33. An assessment not held void because board met in court-room instead of in clerk's office, both being in the same building, and nobody being misled: *Ibid.* Custom of board, when in session in one place, to consider only the assessment of a certain part of the county, cannot deprive a taxpayer in another part of his legal right to present his case there for equalization: *Ibid.* No valid meeting can be held out of the state: *Marion County Com'rs v. Barker*, 25 Kan. 258.

²But if all have due notice of a meeting it is not necessary that all should attend in order to render the proceedings valid: *People v. Lathrop*, 3 Colo. 428.

³See *Dundy v. Richardson County Com'rs*, 8 Neb. 608.

⁴See *ante*, pp. 442, 443.

⁵*Ferris v. Kimble*, 75 Tex. 476. See *People v. Lathrop*, 3 Colo. 428. The acts of a majority of the state board of equalization are not invalidated because one not a member sits with them: *Carroll v. Alsup* (Tenn.), 64 S. W. Rep. 193.

⁶*Wiley v. Flournoy*, 30 Ark. 609; *Mills v. Richland T'p*, 72 Mich. 100;

jurisdiction, and to report to the board for final action.¹ A meeting which the statute requires to be held on a particular day may be adjourned from day to day as the business may require.² The board should keep a record of all its doings;³ and where the statute requires that the record shall be signed by all the members, their signatures are indispensable.⁴

People v. Hagadorn, 104 N. Y. 516. That a hearing before a board of review was had before only one member of the board was held not to invalidate the action of the entire board in raising the assessment: *Earl v. Raymond*, 188 Ill. 15.

¹ *Porter v. Rockford, etc. R. Co.*, 76 Ill. 561; *Beers v. People*, 83 Ill. 488; *Halsey v. People*, 84 Ill. 89; *Board of Liquidation v. Thoman*, 42 La. An. 605; *Boyce v. Sebring*, 66 Mich. 210. See, in general, *People v. Hadley*, 76 N. Y. 337. Evidence that increased valuation was placed upon original list under board's order, and was carried to the tax-roll as board's act: *Duck v. Peeler*, 74 Tex. 268. Duty of committee to report to board instead of deciding upon matter of proposed alteration: *New Orleans Gas-Light Co. v. New Orleans*, 46 La. An. 1146.

² *Halsey v. People*, 84 Ill. 89; *St. Louis Bridge Co. v. People*, 128 Ill. 422; *Rockafellow v. Wilkins*, 77 Iowa 493; *Challis v. Rigg*, 49 Kan. 119; *Auditor-General v. Sparrow*, 116 Mich. 574; *Black v. McGonigle*, 103 Mo. 192; *State v. Vaile*, 122 Mo. 33; *O'Neil v. Tyler*, 3 N. D. 47. See *St. Louis County Com'rs v. Nettleton*, 22 Minn. 356.

³ *Yelverton v. Steele*, 36 Mich. 62; *Maxwell v. Paine*, 53 Mich. 30; *Auditor-General v. Reynolds*, 83 Mich. 471; *Paldi v. Paldi*, 84 Mich. 346; *Attorney-General v. Sparrow*, 116 Mich. 574. The provision of the Iowa statute being directory only, an increase of assessment is not invalidated by the board's failure to record its proceedings: *Hutchinson v. Oskaloosa Equal. Board*, 66 Iowa 35. Where the board of review met at the time

fixed by statute it is immaterial that the entries of the amounts fixed were made subsequently: *Auditor-General v. Ayer*, 122 Mich. 136. A recital in the record of a board of equalization that it had completed the roll cannot be contradicted on a trial to review a subsequent change in the assessment by the county court: *French v. Harney County*, 33 Or. 418. That complaint was made of the assessor's valuation should be shown by the board's record, not by the testimony of members of the board: *State v. Central Pac. R. Co.*, 17 Nev. 259. But a fact which is not a proceeding of the board — such as the delivery to the assessor of the statement required of a railroad company for assessment purposes — may be proved otherwise than by the board's records: *Ibid.* The action taken by the board of equalization is not to be shown by the tax duplicate, as the distribution of taxes is made by the county auditor after the adjournment of the board: *Jones v. Rushville Nat. Ins. Co.*, 135 Ind. 595. Since the statute does not require the board of equalization to approve its records, the absence of such approval does not impair their legal effect: *State v. Wray*, 55 Mo. App. 646. An assistant to the secretary of the board of equalization has no authority to make its record except under the secretary's direction; and if made under such direction the secretary may correct any error discovered immediately after the record is made: *Ibid.*

⁴ *State Auditor v. Jackson County*, 65 Ala. 142; *Perry County v. Rail-*

Changing individual assessments. The valuations by the assessors are conclusive upon boards of review, except as the statute may otherwise provide,¹ and they cannot, therefore, reduce a tax or its lien, or change individual assessments, when not expressly empowered to do so.² Nor, in the absence

road Co., 65 Ala. 391; *Weston v. Monroe*, 84 Mich. 341, distinguishing *Lacey v. Davis*, 4 Mich. 140. The proceedings of the territorial board of equalization in Oklahoma need not be signed: *Pentecost v. Stiles*, 5 Okl. 500. Failure of clerk of board of supervisors to sign board's record in relation to equalization and apportionment held not to affect validity of township and school-district taxes: *Shelden v. Marion T'p*, 101 Mich. 256. Board's failure to sign its records held not to invalidate them: *State v. Wray*, 55 Mo. App. 646.

¹ *Respublica v. Deaves*, 3 Yeates 465. In proceedings before the board of review the assessor's valuation is *prima facie* correct: *Sea Isle City v. Board of Assessors*, 49 N. J. L. 483; *Oregon Coal, etc. Co. v. Coos County*, 30 Or. 308; *State v. Lien*, 108 Wis. 316. The county board of equalization or the county auditor must place on the assessment roll any property unlawfully stricken off by the city board of equalization as exempt from taxation, at the valuation placed on it by the city assessor: *Grisby v. Minnehaha County*, 5 S. D. 561. Where an assessment made by a tax assessor is increased by the tax commissioner, the value as fixed by the assessor cannot be considered on appeal: *Stabmer v. State*, 125 Ala. 72. Where an assessment is proper, a refusal of the board of equalization to consider objections that it was made arbitrarily, and that the board has no power to review it, is harmless: *People v. National Bank*, 123 Cal. 53.

² *Wells v. State Board*, 56 Cal. 194; *San Francisco, etc. R. Co. v. State Board*, 60 Cal. 12; *McConkey v.*

Smith, 73 Ill. 313; *Cleveland, C., C. & St. L. R. Co. v. Board of Com'rs*, 149 Ind. 58; *State v. Central Pac. R. Co.*, 9 Nev. 79; *Dalton v. East Portland*, 11 Or. 426; *Charleston & S. Bridge Co. v. Kanawha County*, 41 W. Va. 658. See *State v. Cramer*, 35 S. C. 213. For cases determining the power of boards of review to increase or reduce individual valuations, see *Hampson v. Dysart* (Ariz.), 53 Pac. Rep. 581; *Pulaski County Board of Equal. Cases*, 49 Ark. 518; *Allison Ranch Mining Co. v. Nevada County*, 104 Cal. 161; *Pensacola v. Louisville & N. R. Co.*, 21 Fla. 492; *Tampa v. Mugge*, 40 Fla. 326; *Collier v. Morrow*, 90 Ga. 148; *Murphey v. Board of Com'rs* (Idaho), 59 Pac. Rep. 715; *People v. Lots in Ashley*, 122 Ill. 297; *Workingmen's Banking Co. v. Wolff*, 150 Ill. 491; *Pomeroy Coal Co. v. Emlen*, 44 Kan. 117; *Detroit Common Council v. Board of Assessors*, 91 Mich. 78; *Anderson v. Ingersoll*, 62 Miss. 73; *State v. Springer*, 134 Mo. 212; *State v. Ellis*, 15 Mont. 224; *McGee v. State*, 32 Neb. 149; *Lincoln Land Co. v. Phelps County*, 59 Neb. 249; *State v. Meyers*, 23 Nev. 274; *Vanderpool v. Bonnell*, 49 N. J. L. 317; *Sea Isle City v. Board of Assessors*, 49 N. J. L. 483; *State v. Sherrer*, 49 N. J. L. 610; *State v. Jersey City*, 50 N. J. L. 141; *People v. Adams*, 125 N. Y. 471; *State v. Raine*, 47 Ohio St. 447; *Wallace v. Bullen*, 6 Okl. 17; *Lee v. Mehew*, 8 Okl. 136; *Streight v. Durham* (Okl.), 61 Pac. Rep. 1096; *Carroll v. Alsup* (Tenn.), 64 S. W. Rep. 193; *State v. Thomas*, 16 Utah 86; *State v. Gaylord*, 73 Wis. 306. Where an appeal lies only at the instance of the person assessed, the appellate board

of any statute authorizing it, can they assess property not listed and valued by the assessors,¹ or deduct property which

cannot increase the assessment: *Appeal of Des Moines, etc. Co.*, 48 Iowa 324; *German American Bank v. Burlington*, 54 Iowa 609. In Indiana the county auditor cannot increase valuations: *Williams v. Segur*, 106 Ind. 368; *Florer v. Sherwood*, 128 Ind. 495. As to the power of state or territorial boards to raise or reduce individual valuations, see *Mackay v. San Francisco*, 113 Cal. 392; *Orr v. State Board*, 2 Idaho 923; *First Nat. Bank v. Brodhecker*, 137 Ind. 693; *Jones v. Rushville Nat. Bank*, 138 Ind. 87; *Eaton v. Union County Nat. Bank*, 141 Ind. 136; *Royer Wheel Co. v. Taylor County (Ky.)*, 47 S. W. Rep. 876; *State Tax Com'rs v. Cady*, 124 Mich. 683; *State Tax Com'rs v. Quinn*, 125 Mich. 128; *Wallace v. Bullen (Okl.)*, 54 Pac. Rep. 974; *Carroll v. Alsup (Tenn.)*, 64 S. W. Rep. 193. The fact that the state board, after acting beyond its power in putting a valuation on property, has forwarded its directions to the county auditor to make the necessary changes in the assessment list, does not prevent a taxpayer's having the action of the board declared void: *Orr v. State Board*, 2 Idaho 923. Changes in valuations, or addition of lands after the time within which the board of review is authorized to take such action, avoid the assessment: *Mercantile Nat. Bank v. Hubbard*, 105 Fed. Rep. 809; *Auditor-General v. Sessions*, 100 Mich. 343; *Auditor-General v. Sparrow*, 116 Mich. 574. See *City Item, etc. Co. v. New Orleans*, 51 La. An. 713. A failure to perform strictly, at the time prescribed, certain ministerial acts required by the statute to be performed by a county board of equalization preliminary to correcting an assessment, was held not to prevent the board from making a correction: *Birmingham B. & L.*

Assoc. v. State, 120 Ala. 403. Under the Nevada statute after the board has heard a complaint and fixed the valuation, it cannot reconsider the matter and reduce the assessment: *State v. Central Pac. R. Co.*, 21 Nev. 172. Where a board of equalization without authority increases the value of real estate, the taxes will be valid only to the extent that they are based on the original assessment: *Johnson County v. Tierney*, 56 Neb. 514; see *Grant v. Bartholemew*, 58 Neb. 839. An assessor called on by the board of review to revise his rolls can question whether the board, in making alterations, has acted under the circumstances required by the statute: *Union Oil Co. v. Campbell*, 48 La. An. 1350. An increase of valuation by the state board of equalization applies as well to the county revenue and other specialties as to state taxes: *Royer Wheel Co. v. Taylor County (Ky.)*, 47 S. W. Rep. 876.

¹ *Powder River Cattle Co. v. Board of Com'rs*, 45 Fed. Rep. 323; *Lyman v. Howe*, 64 Ark. 436; *Pomeroy Coal Co. v. Emlen*, 44 Kan. 117. In *Sellers v. Barrett*, 185 Ill. 466, it was held that an assessment by the board of review of credits as omitted from assessments of former years is not invalid as a review of the assessor's judicial action, where no credits had been listed by the taxpayer or assessed against him. Under the Iowa statute the board of equalization may add to the assessment money and credits discovered after the assessment to be the property of a person assessed: *King v. Parker*, 73 Iowa 757. So in Oregon: *Oregon & W. M. Sav. Bank v. Jordan*, 16 Or. 113; *Ramp v. Marion County*, 24 Or. 461. In Indiana the board of equalization has power to determine whether or not a person owns money

they consider exempt,¹ or take off names they may judge to be unlawfully on the lists.² If the board has authority to equalize and also to change assessments, its power in respect to one of these subjects is not exhausted by a hearing and decision in the other only;³ and on the other hand, if it has authority over but one, it does not lose it by assuming to act upon the other.⁴

A board to review assessments is in effect a board of assessors, and if by law all assessors must be elected by the people the members of the board must be so chosen.⁵ Statutes creating state boards of review have generally been sustained against constitutional objections.⁶ Sometimes the board has not jurisdiction to change a valuation except upon complaint

lent or other property not included in the tax-list, and, in order to do so, it may examine witnesses upon the subject: *State v. Wood*, 110 Ind. 82.

¹ *Board of Liquidation v. Thoman*, 42 La. An. 605. Where the statute provides for the assessment of each piece of land and the improvements thereon separately, and authorizes the board of commissioners, on appeal, to make such deductions or exceptions from, and additions to, the assessment as they may deem just, the valuation of the improvements cannot be stricken from the assessment altogether, and the tax levied on the land alone: *Wells v. Commissioners*, 77 Md. 125.

² Statutory provisions giving the levy court power to "correct and add to the assessments returned," and to make "additions to and corrections of the assessment list," do not authorize it to take off any names it may judge to be unlawfully thereon: *Biggs v. Buckingham* (Del. Ch.), 23 Atl. Rep. 858. See, however, *Louisville Water Co. v. Clark*, 94 Ky. 47.

³ *State v. Ormsby County*, 7 Nev. 392.

⁴ *Paul v. Pacific R. Co.*, 4 Dill. 35.

⁵ See *Houghton v. Austin*, 47 Cal.

646; *Adsit v. Leib*, 76 Ill. 198; *People v. Raymond*, 37 N. Y. 428. In Arkansas a statute authorizing the appointment by the governor of county boards for the equalization of taxes was held not to be in conflict with a constitutional provision for the election in each county of an assessor "with such duties as are now or may be prescribed by law:" *Pulaski County Equal. Board Cases*, 49 Ark. 518. Powers conferred upon a state board to assess railroad property do not contravene a constitutional provision for the election of an assessor in each county without prescribing his duties: *Ames v. People*, 26 Colo. 83. A provision in the constitution of Illinois that the affairs of Cook county shall be managed by a board of fifteen commissioners is not violated by legislation establishing in counties having one hundred and twenty-five thousand or more inhabitants a board of review of assessments: *People v. Board of Com'rs*, 176 Ill. 576.

⁶ See *State Tax Com'rs v. Grand Rapids Assessors*, 124 Mich. 491; *Sawyer v. Dooley*, 21 Nev. 390; *State v. Thorne* (Wis.), 87 N. W. Rep. 797. And see *ante*, pp. 428, 429.

or application;¹ but frequently the board has power to make alterations of its own motion.² In deciding, the members may act on their own knowledge,³ unless the statute requires evidence;⁴ but they are not likely to do this arbitrarily and

¹ See *People v. Lots in City of Ashley*, 122 Ill. 297; *Union Oil Co. v. Campbell*, 48 La. An. 1350; *State v. Dodge County*, 20 Neb. 595; *State v. Central Pac. R. Co.*, 17 Nev. 259. As to who may make complaint, see *Dundee Mortg. L. Inv. Co. v. Charlton*, 32 Fed. Rep. 192; *Ex parte Howard-Harrison Iron Co.*, 119 Ala. 484; *St. Louis Bridge Co. v. People*, 128 Ill. 422. As to the complaint or demand, see *Behan v. Board of Assessors*, 46 La. An. 870; *State v. Dodge County Board*, 20 Neb. 595; *Grand Prairie Twp v. Schure*, 24 Neb. 354; *Central Pac. R. Co. v. Standing*, 13 Utah 488. If the county asks for an appeal to the chairman of the county court from the assessment for county taxation of the property of a railroad company which the trustees have omitted to assess, that is a sufficient proceeding to entitle the company to a re-valuation of the property before the chairman: *Shelby County v. Mississippi & T. R. Co.*, 16 La. 401.

² *Ex parte Howard-Harrison Iron Co.*, 119 Ala. 484; *Pulaski County Board of Equal. Cases*, 47 Ark. 518; *Allison Ranch Mining Co. v. Nevada County*, 104 Cal. 161.

³ *Wells v. State Board*, 56 Cal. 194; *People v. National Bank*, 123 Cal. 53; *St. Louis, etc. R. Co. v. Surrell*, 88 Ill. 535; *American Exp. Co. v. Raymond*, 189 Ill. 232; *Kansas, etc. R. Co. v. Ridley County*, 20 Kan. 141; *Fields v. Russell*, 38 Kan. 720; *Tweed v. Metcalf*, 4 Mich. 579; *Case v. Dean*, 16 Mich. 12; *State v. Severance*, 55 Mo. 378; *Hannibal, etc. R. Co. v. State Board*, 64 Mo. 294; *Bellinger v. Gray*, 51 N. Y. 610. See *Monroe v. New Canaan*, 43 Conn. 309; *State v. Crosley*, 36 N. J. L. 425.

⁴ See *Oakland v. Southern Pac. R. Co.*, 131 Cal. 226; *State v. State Tax Collector*, 39 La. An. 530. It is held in *State v. Dodge County Board*, 20 Neb. 595, that the county board of equalization, being a judicial tribunal, can only decide upon evidence before it a complaint that the assessment of an individual is too low; and any determination based upon the private knowledge of the members is void. In Wisconsin, where no evidence under oath is given or offered before the board of review upon an application to reduce an assessment, the board has no power to reduce: *State v. Fuldner*, 109 Wis. 56. The Wisconsin statute contemplates that the board in altering valuations shall act only on oral evidence before it; and an affidavit is insufficient: *State v. Lien (Wis.)*, 87 N. W. Rep. 1113. A uniform reduction of fifty per cent in the valuation of all property in a town, though erroneous because made in the absence of evidence, could not prejudice owners in such town: *Canfield v. Bayfield County*, 74 Wis. 60. Where a city charter provides that an aggrieved person may complain either orally or in writing, and that the board, on sufficient cause being shown by affidavit, oral proof, or other evidence, to its satisfaction, shall review, and alter or correct the assessment, the board has no power to make a rule by which no proofs of any erroneous assessment of bank-stocks shall be received unless complainant appears in person and submits to answer oral questions to be put by the board: *McMorran v. Wright*, 74 Mich. 356. Information in writing, though not under

in disregard of evidence produced before them.¹ It has been held that a court, when exercising a statutory power to review

oath, held sufficient: *Brooks v. Arenac T'p*, 71 Mich. 23. That the board of review in raising an assessment acted on information obtained from a person not present at the hearing given to the property-owner does not invalidate the assessment: *Earl v. Raymond*, 188 Ill. 15. The inspector's report made to assist the assessor in his valuation of land may properly be used by the board of review as a source of information as to the value: *Scott Lumber Co. v. Oneida County*, 72 Wis. 158. The board is not bound to alter valuations unless a *prima facie* case of error is made out: *State v. Hudson County Com'rs*, 49 N. J. L. 93. Where a taxpayer seeks to reduce an assessment on the ground that she had no assessable personalty, the board may question her as to the proceeds of certain mortgages which she owned a few years before, and may deny her application on her refusal to answer: *People v. Hall*, 83 Hun 375, 31 N. Y. Supp. 956.

¹ *Souther v. South Orange*, 46 N. J. L. 317; *Fratz v. Muller*, 35 Ohio St. 397; *Milwaukee, etc. Iron Co. v. Schubel*, 29 Wis. 444; *Fond du Lac Water Co. v. Fond du Lac*, 82 Wis. 322 (distinguishing *McIntyre v. White Creek*, 43 Wis. 620; *Shove v. Manitowoc*, 57 Wis. 7); *Brown v. Oneida County*, 103 Wis. 149; *State v. Lawler*, 103 Wis. 460. Where, after valuation by the assessors, the person taxed is permitted by law to make affidavit of the actual value of the property, this is only evidence to be considered, and not conclusive, unless made so by statute: *People v. Barker*, 48 N. Y. 70. A board of equalization which accorded full hearing to property owners was held not to have acted arbitrarily because it failed to pass on an offer

to have a witness sworn, where such witness was permitted to state his own views as to values: *Edison Electric Illum. Co. v. Spokane County*, 22 Wash. 168. That the board fixed the same valuation for past years as for the year in which the assessment is made does not raise such a suspicion that the board has acted arbitrarily and without evidence as will overcome the legal presumption that it has honestly discharged its duties: *State v. Hannibal & St. J. R. Co.*, 101 Mo. 120. Where the evidence on a claim that lands had been overvalued was that they were worth from \$10,500, the lowest estimate, to \$22,000, the highest estimate, it was held that the evidence was not sufficient to overthrow the presumption in favor of the assessor's valuation, \$14,000: *State v. Hawkins*, 50 N. J. L. 122. Though the only testimony offered before the board is by one who complains that his assessment is excessive, yet as the assessment roll fixes the value *prima facie*, such testimony cannot be considered uncontradicted, nor can the board's determination of value be reviewed: *Oregon Coal, etc. Co. v. Coos County*, 30 Or. 308. Where the record does not show affirmatively that the board of equalization did not act upon evidence before it in raising an assessment or in adding property thereto, its order is conclusive that it did act upon such evidence as was necessary: *Hampson v. Dysart (Ariz.)*, 53 Pac. Rep. 581; *Hagenmeyer v. Board of Education*, 82 Cal. 214. Courts will not presume that an order by the board of equalization, increasing the list of property assessed to an individual taxpayer, was made without evidence: *Murphy v. Board of Com'rs (Idaho)*, 59 Pac. Rep. 715. The fact that a board of review arbitrarily and in bad

assessments, exercises a special and limited jurisdiction.¹ In some states the decisions of boards of review are made reviewable by appeal or otherwise in the courts.²

The courts have been particularly careful to see that revisory tax tribunals did not change assessments to the prejudice of taxpayers who, under the circumstances, had no reason to look for or anticipate any such change. If the taxpayer himself does not appeal, he has a right to suppose that the assessment against him will be allowed to stand as made.³ If authority is conferred upon the board of review to change assessments under any specified circumstances, the existence of those circumstances is a condition precedent to their action. An illustration is afforded by a case in New York. A city council had authority to correct descriptions of lands returned for non-payment of taxes or assessments; but this, it was held, gave them no right to put to a description of land a new name, as that of the owner, when the effect, if valid, would be to make the tax a personal charge against him. Such a change in the assessment, if it could be supported, would deprive the person assessed of the statutory right to notice, and of the opportunity to apply for correction secured to those named in

faith raised certain assessments was held not to invalidate the entire tax: *Brown v. Oneida County*, 103 Wis. 149. An assessment of railroad property, made arbitrarily and fraudulently, was not remedied by an arbitrary confirmation by the board of equalization: *Oregon & C. R. Co. v. Jackson County (Or.)*, 64 Pac. Rep. 307.

¹ *Hand, J.*, in *Woodruff v. Fisher*, 17 Barb. 224, 232. Upon the return of a citation issued to a delinquent taxpayer by the clerk of the district court of the county in pursuance of the Minnesota statute, the person cited may, if he can show that errors exist in his assessment, have them corrected, and the burden is on him to show wherein he is prejudiced, and that the assessor erred: *State v. Deering & Co.*, 56 Minn. 24. One who has consented to an assessment in a certain sum, which is raised by the board of equalization,

but reduced, on appeal, in the district court, cannot raise the objection that the property is not subject to any assessment: *Phelps Mortg. Co. v. Board of Equal.*, 84 Iowa 610.

² See *State v. Atkins (Ala.)*, 29 South. Rep. 931; *Jones v. Rushville Natural Gas Co.*, 135 Ind. 595; *Richards v. Rock Rapids*, 72 Iowa 77; *Grimes v. Burlington*, 74 Iowa 123; *Burns v. McNally*, 90 Iowa 432; *Frost v. Board of Review (Iowa)*, 86 N. W. Rep. 213; *Rhea v. Umatilla County*, 2 Or. 298, 300; *Shumway v. Baker County*, 3 Or. 246.

³ *State v. Love*, 49 N. J. L. 235. Where the board of review has not made changes in the assessment roll it need not insert any entries in the columns provided for such changes; and, there being no figures in those columns, the presumption follows that no changes were made: *Ball v. Copper Ridge Co.*, 118 Mich. 7.

the original roll.¹ Where a statutory board of review holds stated meetings, with power to increase assessments, everybody is notified of the fact, and is warned to attend if he deems it important; and it is often held that under such circumstances special notice of the raising of a particular assessment, or of the adding of omitted property, need not be given.² But as

¹ *Bennett v. Buffalo*, 17 N. Y. 383. Compare *Overing v. Foote*, 43 N. Y. 290, 294, where this is said to be a "close case." Where the revisory board orders a change made in the assessment, the assessor, it seems, may, in a *certiorari* proceeding, be compelled to make it: *Keck v. Keokuk County*, 37 Iowa 547. The California statute under which the assessor is required, at the request of the board of equalization, to list and assess property which he has failed to assess, merely extends the assessor's duty, and so does not conflict with the state constitution, which, in defining the powers of boards of equalization, does not empower them to cause property to be added to the assessment list: *Farmers' & M. Bank v. Board of Equal.*, 97 Cal. 318. In New York the power of assessors over the roll after completion and notice thereof is limited to acting upon complaints by persons conceiving themselves aggrieved. They cannot raise assessments even when the amount has been fixed by clerical error: *People v. Forrest*, 30 Hun 240; affirmed, 96 N. Y. 544, citing *Westfall v. Preston*, 49 N. Y. 352; *Overing v. Foote*, 65 N. Y. 263. See *Coolbaugh v. Huck*, 86 Ill. 600. Proceedings had before a board of equalization cannot be pleaded as an adjudication in bar of proceedings before a county auditor for the correction of returns: *Gager v. Prout*, 48 Ohio St. 89. The power conferred upon the state auditor to remit taxes does not authorize him to reduce a valuation of real estate made in pursuance of law by a local board of equalization merely

because he believes the valuation to be excessive: *Black v. Hagerty*, 60 Ohio St. 551.

² *State Railroad Tax Cases*, 92 U. S. 575, 617; *Pulaski County Board of Equal. Cases*, 49 Ark. 518; *Lahman v. Hatch*, 124 Cal. 1; *Porter v. Railroad Co.*, 76 Ill. 569; *Smith v. Rude Bros. Manuf. Co.*, 131 Ind. 150; *Satterwhite v. State*, 142 Ind. 1; *State v. Springer*, 134 Mo. 212; *State v. Lindell Hotel Co.*, 9 Mo. App. 450; *Lamb v. Connolly*, 122 N. Y. 531; *Terrel v. Wheeler*, 123 N. Y. 76; *Fithian v. Wheeler*, 125 N. Y. 696; *Oregon & W. M. Sav. Bank v. Jordan*, 16 Or. 113; *Oregon & C. R. Co. v. Lane County*, 23 Or. 386; *Billinghurst v. Spink County*, 5 S. D. 205; *Carroll v. Alsup* (Tenn.), 64 S. W. Rep. 193. Compare *Avery v. East Saginaw*, 44 Mich. 587. It was held in *Stell v. Watson*, 51 Ark. 516, that failure to give the notice required by a statute providing that when the valuation of property is raised by the board of equalization it shall give notice thereof "by postal card or otherwise, through the mails," does not affect the board's jurisdiction. In *Detroit Citizens' St. R. Co. v. Common Council*, 125 Mich. 673, it was decided that the common council, sitting as a review board, was not required to notify an appellant to attend when it was considering appeals from the board of assessors, and that, if such appellant desired to be heard, it should have been present and requested it. In *Caledonia T'p v. Rose*, 94 Mich. 216, it was held that a taxpayer who fails to appear at the time and place provided for the board's session is estopped

an increase in an assessment is not frequent, and will seldom be anticipated by the taxpayer, who will not be likely to attend upon the review except to seek a reduction, it seems safer and more just to hold, as has generally been done, that the taxpayer should have personal notice of any purpose to increase the assessment made against him.¹ Yet by appearing before the board he waives all objections to the absence or insuffi-

from attacking the assessment. It was said in *Hinds v. Belvidere T'p*, 107 Mich. 664, that a taxpayer must be presumed to know the powers and duties of the board of review, and the time fixed by statute for its meeting, and that he cannot excuse his failure to appear before that body by showing that he was out of the state at the time. The case of *Ramp v. Marion County*, 24 Or. 461, is to the effect that where an owner fails to see that taxable property is listed, and valued by the assessor, the board of equalization should put it on the assessment roll, and value it; and if the owner desires to be heard on his right to a reduction for indebtedness, he should appear before the board at the time and place specified for its meeting. Assessment by state board of equalization without notifying owner's attorney, as committee of board had agreed to do if not satisfied with his statement, was held not sufficient proof of fraud in absence of showing that board did not thoroughly investigate facts before deciding upon assessment: *La Salle & P. H. & D. R. Co. v. Donoghue*, 127 Ill. 27.

¹ *Lewis v. Withers*, 44 Fed. Rep. 165; *Mercantile Nat. Bank v. Hubbard*, 105 Fed. Rep. 809; *Patten v. Green*, 13 Cal. 325; *Los Angeles v. Railroad Co.*, 49 Cal. 638; *Cleghorn v. Postlewaite*, 43 Ill. 428; *Darling v. Gunn*, 50 Ill. 424; *McConkey v. Smith*, 73 Ill. 313; *National Bank v. Cook*, 77 Ill. 622; *People v. Ward*, 105 Ill. 620; *Huling v. Ehrich*, 183 Ill. 315; Board

of Com'rs *v. Fahlor*, 114 Ind. 176; *Kuntz v. Sumption*, 117 Ind. 1; *Henkle v. Keota*, 68 Iowa 334; *Leavenworth County v. Lang*, 8 Kan. 284; *Kansas Pac. R. Co. v. Russell*, 8 Kan. 558; *Griffith v. Watson*, 19 Kan. 23; *Topeka City R. Co. v. Roberts*, 45 Kan. 360; *Allegany County Com'rs v. New York Mining Co.*, 76 Md. 549; *Baltimore County Com'rs v. Winand*, 77 Md. 522; *Myers v. Baltimore County Com'rs*, 83 Md. 385; *Griswold v. School Dist.*, 24 Mich. 262; *Phillips v. New Buffalo*, 64 Mich. 683; *Alabama & V. R. Co. v. Brennan*, 69 Miss. 103; *Relfe v. Life Ins. Co.*, 11 Mo. App. 374; *Rich Hill Mining Co. v. Neptune*, 19 Mo. App. 438; *Sioux City, etc. R. Co. v. Washington County*, 3 Neb. 30; *South Platte Land Co. v. Buffalo County*, 7 Neb. 253; *McGee v. State*, 32 Neb. 149; *State v. Northern Belle, etc. Co.*, 12 Nev. 89; *Clark v. Mulford*, 43 N. J. L. 550; *Clark Thread Co. v. Kearney*, 55 N. J. L. 50; *National Bank v. Boyd*, 35 S. C. 233; *Avant v. Flynn*, 2 S. D. 153; *San Antonio v. Hoefling*, 90 Tex. 511; *Citizens' Nat. Bank v. Columbia County (Wash.)*, 63 Pac. Rep. 209; *Matheson v. Mazomanie*, 20 Wis. 191; *Phillips v. Stevens Point*, 25 Wis. 594. A town committee may increase valuations without notice, but the reviewing board must give notice: *Vanderpool v. Bonnel*, 49 N. J. L. 317. That the conclusion reached by the board was just is no justification of a raise of an assessment without notice: *Lewis v. Bishop*, 19 Wash. 312. The defense that notice was omitted must be

ciency of notice.¹ The requisites of the notice are considered in the cases cited in the margin.²

Equalization. Equalization of assessments has, for its general purpose, to bring the assessments of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of

pleaded and proved by the party relying thereupon: *King v. Parker*, 73 Iowa 757. A statute requiring ten days' notice to be given the property owner of an application for an increase in the assessment was held not applicable to non-resident owners: *State v. Love*, 49 N. J. L. 235. An act empowering county boards to equalize valuations, and requiring notice to taxpayers in case assessments are to be revised, does not apply to corporations to such an extent as to require notice to be given them of the valuation made by the board of their capital stock: *Smith v. Rude Bros. Manuf. Co.*, 131 Ind. 150. As to what constitutes a "raising" of valuations or assessments so as to necessitate the giving of notice thereof to the owners, see *Kissimmee City v. Cannon*, 26 Fla. 3; *Jackson v. Chizum*, 78 Iowa 209. It was held in *Grant v. Bartholemew*, 58 Neb. 839, that the action of a board of equalization in raising the valuation placed on a certain piece of property by the assessor, without notice to the owner and without complaint that his assessment was too low, does not, although invalid, vitiate the original assessment.

¹ *Tillis v. County Com'rs*, 91 Ala. 396; *Farmers' & M. Bank v. Board of Equal.*, 97 Cal. 318; *American Exp. Co. v. Raymond*, 189 Ill. 232; *Hutchinson v. Oskaloosa Equal. Board*, 66 Iowa 35; *Faribault Water-Works Co. v. County Com'rs*, 44 Minn. 12; *State v. Board of Equal.*, 108 Mo. 235; *Taber v. Wilson*, 34 Mo. App.

89; *Avant v. Flynn*, 2 S. D. 153; *Central Pac. R. Co. v. Standing*, 13 Utah 488. One who has had an opportunity to be heard by the board cannot complain that the board did not at the same meeting appoint a committee to hear objections and report to it: *Burlington Gas-Light Co. v. Burlington*, 101 Iowa 458. Facts held to constitute an appearance before the board: *Standard Cattle Co. v. Baird*, 8 Wyo. 144. If one feels himself aggrieved by the board's action, he may appeal to it at once for the relief to which he thinks himself entitled: *Ingersoll v. Des Moines*, 46 Iowa 553.

² *Hagenmeyer v. Board of Equal.*, 82 Cal. 214; *Farmers' & M. Bank v. Board of Equal.*, 97 Cal. 318; *Allison Ranch Mining Co. v. Nevada County*, 104 Cal. 161; *Eaton v. Union County Nat. Bank*, 141 Ind. 159; *Allegany County v. New York Mining Co.*, 76 Md. 549; *Lum v. Vicksburg*, 72 Miss. 950; *State v. Drake*, 33 N. J. L. 194; *State v. De Bow*, 46 N. J. L. 286; *Poppleton v. Yamhill County*, 18 Or. 377; *Lewis v. Bishop*, 19 Wash. 312; *Ladd v. Gilson* (Wash.), 66 Pac. Rep. 126. As to what is reasonable notice when notice is required, see *Spring Valley Water-Works v. Schottler*, 62 Cal. 69. Proceedings at an adjourned meeting held binding on one who had notice of the first meeting but did not attend: *Lum v. Vicksburg*, 72 Miss. 950. As to waiver of notice, see *Eaton v. Union County Nat. Bank*, 141 Ind. 159.

the tax.¹ To accomplish this purpose assessment rolls are equalized by county courts, boards of supervisors or commissioners, and the aggregate of the county assessments by a state

¹State v. Cunningham, 153 Mo. 642; Sparrow, 116 Mich. 574; Messenger v. Peter (Mich.), 88 N. W. Rep. 209; County Com'rs v. Parker, 7 Minn. 207; State v. Empanger, 73 Minn. 337; St. Joseph Lead Co. v. Simms, 108 Mo. 222; State v. Vaile, 122 Mo. 33; State v. Cunningham, 153 Mo. 642; State v. State Board, 18 Mont. 473; State v. Fortune (Mont.), 60 Pac. Rep. 1086; Suydam v. Merrick County, 19 Neb. 155; State v. Edwards, 31 Neb. 369; Grant v. Bartholemew, 58 Neb. 839; State v. Washoe Co., 13 Nev. 140; State v. Meyers, 23 Nev. 274; State v. Hudson County Com'rs, 46 N. J. L. 93; State v. Hopper, 54 N. J. L. 544; State v. Raine, 47 Ohio St. 447; Tallmadge v. Supervisors, 21 Barb. 611; Gray v. Stiles, 6 Okl. 455; Webb v. Renfrew, 7 Okl. 198; Bardrick v. Dillon, 7 Okl. 535; Weber v. Dillon, 7 Okl. 568; Wallace v. Bullen (Okl.), 54 Pac. Rep. 974; Oregon & C. R. Co. v. Croisan, 22 Or. 393; Smith v. Kelly, 24 Or. 464; Godfrey v. Douglas County, 28 Or. 446; Dayton v. Board of Equal., 33 Or. 131; Grigsby v. Minnehaha County, 5 S. D. 561; Campbell v. Minnehaha County, 11 S. D. 133; Coler v. Sterling, 11 S. D. 140; Salt Lake City v. Armstrong, 15 Utah 472; State v. Thomas, 16 Utah 86; Salt Lake County v. State Board, 18 Utah 172; Douglas Co. v. Commonwealth, 97 Va. 397; State v. Lippels (Wis.), 87 N. W. Rep. 1093. A contention that a tax was not made excessive by an improper equalization, and that therefore the method employed did not invalidate the tax, held to be without merit: Messenger v. Peter (Mich.), 88 N. W. Rep. 209. Under the North Dakota statute the failure of the county board of equalization to meet is not fatal to the tax: Wells County v. McHenry, 7 N. D. 246.

board established for the purpose. This is not done by changing individual assessments, but by fixing the aggregate sums for the several districts at what, in the opinion of the board, they should be, so that general taxes may be levied according to this determination, instead of on the assessor's footings. These boards act judicially in equalizing,¹ and their decision is conclusive.² They are commonly composed of popular representatives, and they act upon their own judgment of what is equal and just.³ They are not bound to give notice to taxpayers before raising the assessment of a district except as the statute may provide for it.⁴ In raising or reducing the assessment of a district, it is sufficient for the board to designate a percentage of increase or reduction.⁵ A failure of the board to

¹Union Coal Co. v. Campbell, 48 La. An. 1350; New York v. Davenport, 92 N. Y. 604, citing Bellinger v. Gray, 51 N. Y. 610, and other cases; Brown v. Oneida County, 103 Wis. 149.

²Grand Rapids v. Welleman, 85 Mich. 234. The true valuation of property for taxation is that fixed by the board of equalization, and a levy made on an assessment roll filed before equalization has been made is erroneous and illegal as to any excess: Dakota Loan, etc. Co. v. Codrington, 9 S. D. 159. County courts have not power to change assessments made by the board of equalization where the roll was fully corrected by the board before final adjournment: French v. Harney County, 33 Or. 418.

³See Wells v. State Board, 56 Cal. 194; Case v. Dean, 16 Mich. 12; Grand Rapids v. Welleman, 85 Mich. 234. State assessors in New York, in reviewing the equalization made by a county board, are not bound by the technical rules which govern courts concerning the admissibility of evidence: People v. State Assessors, 47 Hun 450. In Kansas the board of county commissioners, when meeting as a board of equalization, can raise or lower the assessment of any township or city by its own motion, and

without a hearing or evidence upon individual assessments: Fields v. Russell, 38 Kan. 720; Challis v. Rigg, 49 Kan. 119. It is held in State v. Edwards, 26 Neb. 701, that no complaint is necessary to authorize the board to equalize the valuations between the different precincts or townships of a county: State v. Edwards, 26 Neb. 701.

⁴Spalding v. Hill, 86 Ky. 656; State v. Haynes, 82 Minn. 34; Hallo v. Helmer, 12 Neb. 87; State v. Armstrong, 19 Utah 117. See Gilbert v. Lyon County, 30 Kan. 166.

⁵Hubbard v. Winsor, 15 Mich. 146; Lee v. Mehew, 8 Okl. 136. Where a state board of equalization, after equalizing the valuations throughout the state, adopted a motion to raise the assessed valuation of all real estate ten per cent "for the purpose of raising revenue for the state," this did not invalidate the assessment: Shuttuck v. Smith, 6 N. D. 56. A resolution adding a lump sum to the value of real estate and another to that of the personalty is not authorized by a statute permitting the board to add to the value "such percentage as shall appear to them just and proper;" and it is void: McCallum v. Board of Assessors, 58 N. J. L. 544.

sit from day to day as directed by the statute will not invalidate the taxes if, in fact, full opportunity to be heard and make objections was given to all.¹ It has, however, been held that under a statute requiring a certificate of equalization by the board to be attached to the assessment roll, the failure of the chairman of the board to fill out and attach the proper certificate renders a tax-sale void.²

In some states the board of equalization or some similar body is made a special board of assessors for railroad property,³ and

¹ Wolfe v. Murphy, 60 Miss. 1.

² Westbrook v. Miller, 64 Mich. 129.

³ The state board is a mere creation of the statute, possessing only statutory powers, and a limited jurisdiction. It has no jurisdiction to assess any property of a railroad company, save as the statute confers that right upon it, and it can assess only such property of railroad companies as the statute provides those companies shall make return of to the auditor: Nashville & D. R. Co. v. State (Ala.), 30 South. Rep. 619. In California the state board's authority is exclusive of that of the county boards: People v. Sacramento County, 59 Cal. 321. The state board was held not to have jurisdiction to make a re-assessment under the recent California statute of railroad property which had regularly been assessed under the code: Colusa County v. Glenn County, 124 Cal. 498. In Connecticut the statutory provision that the valuation of railroad property by the board of equalization shall be final prevents the state, when sued for railroad taxes, from showing that the estimate of cash on hand by the railroad, as stated by the board, is erroneous: State v. New York, N. H. & H. R. Co., 60 Conn. 326. And the testimony of past members of the board is admissible to show on what information the board acted in making the assessment: Ibid. In Illinois, where the state board finds that assessors

have disobeyed the constitutional requirement to assess at the fair cash value, and have assessed at half the value only, they may assess railroad property in like proportion: Law v. People, 87 Ill. 385. See Bureau County v. Railroad Co., 44 Ill. 229; Chicago, etc. R. Co. v. Livingston County, 68 Ill. 458. As to the powers of the state board in Indiana in assessing property of railroads: Cleveland, C., C. & St. L. R. Co. v. Backus, 133 Ind. 513; Pittsburgh, C., C. & St. L. R. Co. v. Backus, 133 Ind. 625. It is held in Kentucky that under the statute providing for the valuation of railroad property by the state board of equalization, a certification by the board of the assessment lists to the county court and notice to the assessed railroad is a prerequisite to the collection of the tax: Kentucky Central R. Co. v. Pendleton County (Ky.), 2 S. W. Rep. 176. The Missouri statute creating a state board of equalization, with exclusive power to assess railroad property, was sustained in Central Trust Co. v. Wabash, etc. R. Co., 27 Fed. Rep. 14; and it was held in State v. Hannibal & St. J. R. Co., 101 Mo. 120, that such statute does not require the board to base the valuation on any evidence other than the report of the company's officer, nor does it require the board to preserve the evidence in the record of its proceedings: State v. Hannibal & St. J. R. Co., 101 Mo. 120. In New Jersey, where

it is to apportion the valuation among the several counties through which the roads run.¹ Such boards are also sometimes given power to add omitted persons or property for taxation or assessment.²

it was shown that the local assessors illegally took but a percentage of what they deemed the true value of the property appraised by them, it was held that the state board for valuing the property of railroads and canal companies could not take such reduced valuations as the standard of value: *Central R. v. State Board*, 49 N. J. L. 1. As to the review, on *certiorari*, by the supreme court of the state board's valuation: *Ibid.* In Utah the state board of equalization must assess all property and franchises of corporations operated in more than one county: *Salt Lake County v. State Board*, 18 Utah 172. Though the state board is empowered to assess toll-bridges, its determination that a bridge is a toll-bridge is not conclusive: *State v. Hannibal & St. J. R. Co.*, 97 Mo. 348.

¹See *ante*, pp. 693, 694. Where, in taxing a railroad, the value is appor-

tioned among the counties through which it runs, a provision that the auditor shall not thus apportion it until the equalization has been made is mandatory: *State Auditor v. Jackson County*, 65 Ala. 142; *Perry County v. Railroad Co.*, 65 Ala. 391.

²See *Wallace v. Jaeger*, 39 Iowa 228. Apportionments of taxes among the wards of a city under the provisions of its charter cannot be disturbed by the state board of tax commissioners, but that board may add to the roll assessments against persons whose names have been omitted therefrom: *State Tax Com'rs v. Board of Assessors*, 124 Mich. 491. In Kentucky the state board of valuation and assessment has implied power to make omitted assessments of franchises for previous years: *Stone v. Louisville (Ky.)*, 57 S. W. Rep. 627.

CHAPTER XIII.

THE TAX-ROLL AND WARRANT.

The tax-roll. The subjects of taxation having been listed properly, and a basis for apportionment established, nothing remains to fix a liability but to form the tax-roll¹ or tax-book² by extending,³ either upon the original assessment-list,⁴ or

¹The tax-roll is void if made out before the tax is voted: *Gale v. Mead*, 4 Hill 109. If the probate judge fails to make out and deliver a tax-roll to the collector, as required by statute, upon a levy's being made by the county commissioners, and the tax-year passes without his having done so, the power to collect the tax by the ordinary statutory mode is gone: *Branch v. Davis*, 29 Fed. Rep. 888. Failure to insert in the blanks provided for that purpose at the top of each page of the roll the name of the township and that of the county does not render the roll so far variant from the original assessment as to invalidate the tax, where the roll is otherwise sufficiently identified, as by the names' being printed on the outside of the book in which the roll is copied: *Auditor-General v. Keweenaw Assoc.*, 107 Mich. 405. As the certificates of the assessors and of the chairman of the board of super-

visors form no part of the assessment roll they need not be copied into the collector's roll, and if so copied they do not form part thereof: *Boyce v. Sebring*, 66 Mich. 210; *Hecock v. Van Dusen*, 80 Mich. 359.

²A folded sheet of paper is not a "book" within the statutory requirement that the clerk of the county court, within ten days after such court levies the taxes on railroad property, shall extend the same on a separate tax-book to be known as the "Railroad Tax-Book:" *State v. St. Louis & S. F. R. Co.*, 135 Mo. 77. A tax-list prepared by transcribing the assessment list into two books complies with a statutory provision that the assessment shall be transcribed into "a suitable book:" *Reynolds v. Fisher*, 43 Neb. 172.

³Where a city officer places on the roll taxable property, and properly values it, and extends on the same, in accordance with the law, the taxes

⁴Formerly it was held in Michigan that failure to observe statutory requirements that the taxes should be entered and extended upon the original assessment roll, and that the roll delivered to the treasurer should be a copy of the original roll, was fatal, and invalidated tax-deeds founded upon the taxes extended upon the collection rolls: *Seymour v. Peters*, 67 Mich. 415. But under

curative provisions subsequently enacted it was held that the assessor's failure so to extend the taxes, and to put into the copy the figures showing at what he originally assessed the property, does not invalidate the assessment where it appears that he inserted in the copy the figures showing the values as determined by the board of review: *Ludington v. Escanaba*, 115 Mich. 298.

upon a duplicate thereof, the several proportionate amounts,¹ as a charge against the several taxables.² Then, but not until then, will a liability for any particular sum be fixed.³ When

due, such assessment is valid, though the assessor knows the city does not intend to collect the same: *Tampa v. Kaunitz*, 39 Fla. 683. An assessment and tax levy being valid, the lien therefor is preserved even though taxes were not extended on the tax-book by the county clerk as required by law: *State v. Harper*, 83 Mo. 670. The assessor's failure to extend upon the list delivered to the treasurer a tax which has been levied in pursuance of law does not excuse the failure of the proper officer to collect such tax: *People v. Ames*, 24 Colo. 422. A provision that the treasurer, on receiving the tax-list, shall enter opposite each parcel the taxes remaining unpaid for the previous years, and that any sale for delinquent taxes not so entered shall be invalid, does not require him, where the land has been sold for the delinquent taxes for the preceding year before he receives the list, to enter such taxes opposite the property as delinquent: *Hoben v. Snell*, 94 Iowa 205. Under the Illinois statute, if the tax-collector's return shows that no personalty out of which to collect an imposed tax can be found, the tax is properly extended against the taxpayer's realty: *King v. People*, 193 Ill. 530.

¹ Statute requiring the list of taxes assessed on non-residents' lands to state the amount of the tax is mandatory: *Derry Nat. Bank v. Griffin*, 68 N. H. 183.

² Although the tax-book and warrant do not contain a descriptive list as required by law, the collector may make a seizure: *Dickson v. Rouse*, 80 Mo. 224. When the description of lands in the assessor's duplicate is correct, a tax upon such lands will be sustained, although the warrant

is to make the taxes by a sale of personal property, and contains no description of the lands whatever: *State v. Hawkins*, 50 N. J. L. 122. In *Charleston v. Lowry*, 89 Me. 582, it was held that it is not necessary, as a prerequisite to the validity of the tax, that the lists committed to the collector should contain an exact description of the real estate taxed, or even the same as is contained in the record of assessments. And in *Mason v. Belfast Hotel Co.*, 89 Me. 384, it was held that where the collector's warrant and lists did not contain a description of the real estate, and the collector in making up the notice to the land-owner copied into it the description in the assessor's book, he was not limited to the warrant as a source of information. If lands are assessed in parcels, and the description and value are set opposite each parcel, the fact that the amount of tax on each was not stated, the amount on the whole being placed opposite the description of the first tract, does not show that the land was taxed as a whole: *Cornoy v. Wetmore*, 92 Iowa 100.

³ *Greenough v. Fulton Coal Co.*, 74 Pa. St. 486, 500. A levy extended on the assessment is necessary before a court can condemn and sell; so held in the case of omitted lands: *St. Louis, I. M. etc. R. Co. v. State*, 47 Ark. 323. Where a town lot is assessed and placed upon the tax-roll, but no tax is carried out on the tax-roll against the lot, a sale and deed for such tax are void: *Moon v. March*, 40 Kan. 58. Where the county board of supervisors delivered an incomplete tax-roll to the supervisors of the town, and adjourned, its action was void, not merely irregular: *Ne-Ha-Sa-Ne-Park Assoc. v. Lloyd*, 7 App.

the sum to be raised is settled, and assessment is completed, the calculation of the percentage of the tax, and the determination of the sum chargeable to each taxable, are clerical acts, and may be performed by anyone.¹ The tax-roll must be signed² and authenticated³ as required by the statute.

Different rolls for different taxes. Where different rolls are required for different taxes, the placing of a tax on the wrong roll is fatal to such tax.⁴ But it is not always the practice to have one assessment and tax-roll for the state taxes and another for the local taxes. On the contrary, for what may be called the *general* taxes of the municipality, it is customary to provide that, when voted, they shall be certified to such state or county officer or board as is authorized to issue the tax warrant for state or county taxes, and by such officer or board shall be spread upon the same roll or list, though in a separate column, and be collected by authority of the same warrant. The regulation may be the opposite of this: that the state taxes shall be certified to county or town officers, and by them spread upon the roll. Such provisions do not give the state

Div. (N. Y.) 359. Where the tax for which land was sold was not carried forward to the tax-lists of the year in which the sale was had, as required by statute, the sale was void: *Hooper v. Sac County Bank*, 72 Iowa 280. In the absence of evidence when the taxes were extended on the tax-list by the auditor, a tax is not "ascertained and levied" until the auditor has completed the tax-lists and turned them over to the treasurer as required by law: *Nelson v. Becker*, 63 Minn. 61.

¹ *State v. Maginnis*, 26 La. An. 558. When a railroad tax is measured by gross receipts determined by the company's annual report, the computation is ministerial, and may be made by a clerk: *Philadelphia & R. R. Co. v. Commonwealth*, 104 Pa. St. 86.

² Signing the warrant annexed to the tax-roll is a sufficient signing of the latter: *Kane v. Brooklyn*, 114 N. Y. 586. Even though such war-

rant is not required by law: *Hogelskamp v. Weeks*, 37 Mich. 422. It is no defense to an action for the collection of taxes that a recorded list of assessments upon which the defendant's assessment appears, was not signed by the assessors. If the papers in the collector's hands are complete in themselves, they are sufficient proof of the assessments: *Bath v. Whitmore*, 79 Me. 182.

³ In *St. Louis & S. F. R. Co. v. Epperson*, 97 Mo. 300, it was held that a tax-book not authenticated by the county clerk and the seal of his office, as required by the statute, does not authorize the collector to levy or protect him in levying. But in the later case of *Taft v. McCulloch*, 135 Mo. 588, the fact that a copy of the assessor's book furnished the collector was not authenticated by seal, as required by statute, was held not to invalidate the tax.

⁴ *Folkerts v. Power*, 42 Mich. 283.

or county functionaries any power to review, revise or set aside the local action, but they must levy what has been voted, and may be compelled to do so.¹

Blending taxes. A very common provision of statute, where several taxes are to be spread upon the same roll, is that they shall be kept separate and placed in distinct columns on the roll. This advises the taxpayer of the nature of the several demands that are made upon him, and enables him to pay or tender the amount of any one the justice and legality of which he concedes, and to decline to pay any other if he considers it unwarranted. Such provision is mandatory, and if not obeyed the taxes cannot be enforced.² A custom to blend them cannot make the roll valid.³ But separating the taxes when the statute does not require it will not affect the roll; as this deprives no one of any right whatever.⁴ And no doubt the rule as to the effect of blending taxes might be changed by statute, as in some states has been done. Even without express statutory authority the blending of state, county, and city taxes in one assessment is held in Maine not to be a defense to an action at law for the taxes.⁵

¹ Where the statute gives a city full authority to vote money for the support of the poor, etc., and requires the supervisors to "cause the same to be raised, assessed, and collected," the supervisors have no discretion to refuse on the ground that funds for the like purposes have previously been misapplied: *Ex parte Albany Common Council*, 3 Cow. 358. Compare *Williams v. School Dist.*, 21 Pick. 75. Sometimes the auditing of accounts is made by law equivalent to the vote of a tax: See *People v. Supervisors*, 1 Hill 195.

² *People v. Moore*, 1 Idaho (N. S.) 662; *Thayer v. Stearns*, 1 Pick. 482; *Case v. Dean*, 60 Mich. 12; *Tillotson v. Webber*, 96 Mich. 144; *State v. Wabash, St. L. & P. R. Co.*, 90 Mo. 166. See *Silsbee v. Stockle*, 44 Mich. 561. It would be otherwise in Illinois under a statute of that state: See *Thatcher v. People*, 79 Ill. 597.

³ *State v. Falkinburge*, 15 N. J. L. 320; *Camden & Amboy R. Co. v. Hillegas*, 18 N. J. L. 11. But now it is provided in New Jersey, by statute, that no assessment of taxes shall be set aside on *certiorari* because the state and local taxes are blended together: See *State v. Saalman*, 37 N. J. L. 156.

⁴ *Wall v. Trumbull*, 16 Mich. 228. Compare *Torrey v. Mulbury*, 21 Pick. 64.

⁵ *Rockland v. Ulmer*, 84 Me. 503. In this case the court says: "We understand that just such a blending of the different taxes has been for years and is now almost, if not quite, universally practiced in the different municipalities of the state. Such a general and long-continued practice, without objection, under a statute, goes far to settle the proper construction of the statute, there being, as in this case, no words of prohibi-

The collector's warrant — *Necessity for.* Before the officer who is designated by law for the duty of collecting the taxes can lawfully proceed to do so, he must have his warrant for the purpose, in due form of law.¹ This, in different states, may

tion. A construction the people themselves have placed upon a statute of their own making—a construction under which they have long acted without question—should not be disregarded or overturned by the court unless, indeed, it is found to work manifest injustice. We do not see how this mode is unjust to the taxpayer. It does not increase the relative valuation of his property, nor increase the amount of his tax. In answer to the suggestion that, under this mode, he cannot elect which tax to pay and which to resist, it may be said that state, county, and town are not separate political taxing powers. All the various taxes are levied and collected by authority of the state, and all are for the benefit of the people of the state. If any political agency errs, the injured taxpayer has ample remedy, but should not refuse to bear his share of the public burden. The defendant admits that this mode of assessing taxes has never been before assailed in the courts of this state, but calls our attention to decisions of courts in other states, holding that such a practice or mode is not authorized in those states. Some of these cases came before the court on *certiorari*. Some were cases of sales of property for taxes. None seem to have been, like this case, a suit at law for the taxes. Those courts, however, were construing their own statutes as applicable to the cases before them. The practice of their people may have been different, or there may have been no general practice. At any rate, those decisions cannot compel us to construe our statute contrary to the

general practice and understanding of our people. We must hold that the mode of assessment followed here is sufficient to maintain this action.”

¹ *Highlands v. Johnson*, 24 Colo. 371; *Donald v. McKinnon*, 17 Fla. 746; *Pearson v. Canney*, 64 Me. 188; *Taft v. Barrett*, 58 N. H. 447; *Frazier v. Prince*, 8 Okl. 253; *Asper v. Moon* (Utah), 67 Pac. Rep. 409. It is not essential that the warrant should come from some other official; it may be conferred directly upon the collector: *Highlands v. Johnson*, *supra*. In Iowa a warrant is not required, the authority to collect being conferred by the statute itself when the proper list is made out and delivered: *Parker v. Sexton*, 29 Iowa 421; *Rhodes v. Sexton*, 33 Iowa 540; *Litchfield v. Hamilton County*, 40 Iowa 66; *Chicago, etc. R. Co. v. Carroll County*, 41 Iowa 153; *Tallman v. Cooke*, 43 Iowa 330. Under the present procedure in Michigan the absence of a warrant from a tax-roll does not invalidate the taxes or discharge the lien; and the same rule applies where the controller's warrant is missing from the copy of a city tax-roll: *Auditor-General v. Sparrow*, 116 Mich. 574. See *Hogelskamp v. Weeks*, 37 Mich. 422. And in Nebraska the warrant required by statute to be attached to the tax-list delivered to the county treasurer is not essential to invest him with jurisdiction to sell real estate for delinquent taxes which are a lien thereon: *Grant v. Bartholemew*, 58 Neb. 839. Collector's not having been furnished with a warrant held no ground for opening judgment on his bond for balance of school taxes uncollected

be the assessment roll¹ or list, with the tax extended upon it, or it may be a duplicate of the list with a like extension, or it may be either of these, with a formal warrant attached, particularly indicating what are his duties under it, and commanding their performance.² Whatever the statute provides for, in this regard, the collector must have, and he is a trespasser if he proceeds to compulsory action without it.³ Upon this point the decisions are numerous and uniform. In a case arising under a statute which required that a warrant should be attached to the tax duplicate, the following remarks have been made: "The authority of a collector of taxes to collect is his warrant. The duplicate is but a memorandum of the amount he is to collect from the parties therein named respectively. Without a warrant the collector becomes a trespasser as soon as he intermeddles with the property of the taxpayer. There must also be a law authorizing the issue of a warrant, and some person appointed to issue it, and it must conform to the law authorizing it, and be issued by the proper person designated by law, or it is no protection to a collector."⁴ No question is made anywhere of the correctness of this doctrine.

found to be due on his settlement with school board: *Commonwealth v. Titman*, 148 Pa. St. 168.

¹ In Mississippi the assessment-roll is the warrant of the tax-collector for collecting the taxes. If that is void his action in the sale of land is also void: *Mullins v. Shaw*, 77 Miss. 900. Tax-books made out, corrected, and allowed by the board of commissioners, held sufficient to authorize a collector to collect taxes, and to render him liable for failure to collect them: *Fidelity, etc. Co. v. Mobile County*, 124 Ala. 144.

² That warrant was attached to the original assessment-roll instead of to a prepared copy, held not to avoid it: *West Michigan Lumber Co. v. Dean*, 73 Mich. 459. See *Auditor-General v. Hutchinson*, 113 Mich. 245.

³ *Warrensburg v. Miller*, 77 Mo. 56; *Stansbury v. Jordan*, 145 Mo. 371. In

the absence of a warrant the due performance of all other acts prescribed by statute cannot make out a valid sale for taxes: *Donald v. McKinnon*, 17 Fla. 746; *Frazier v. Prince*, 8 Okl. 253. But see *Auditor-General v. Sparrow*, 116 Mich. 574; *Grant v. Bartholemew*, 58 Neb. 839.

⁴ *Hilbish v. Horner*, 58 Pa. St. 93, citing *Pearce v. Torrence*, 2 Grant's Cases 82; *Stephens v. Wilkins*, 6 Pa. St. 260. And see *Chalker v. Ives*, 55 Pa. St. 81; *Falconer v. Shores*, 37 Ark. 386; *Waite v. Hyde Park Lumber Co.*, 65 Vt. 103. The same doctrine is declared under a different law in *Slade v. Governor*, 3 Dev. 365; *Kelley v. Craig*, 5 Ired. 129. And see *Brown v. Wright*, 17 Vt. 97. An order of the fiscal court directing the sheriff to collect twenty-five cents on each \$100 of the taxable property reported by the assessor for the year

Statutory requisites. Whatever may be the requisites for the warrant under the statute, care must be taken that they be observed.¹ One of the most important of these is that it be directed to the proper officer.² Where the law has indicated one officer to perform the duty of collection, the officer who issues the warrant is without power to designate a different one; and if, even by inadvertence, the process were to be directed to the sheriff when the lawful collector is the township treasurer, or *vice versa*, it would be void on its face.³ But the naming of the

1894, and \$100 on each tithable reported for said year, is sufficiently explicit: *Pulaski County v. Watson* (Ky), 50 S. W. Rep. 1. It is a sufficient basis for an order of the county court directing the county clerk to issue a warrant for the collection of taxes that there is a delinquent list regularly returned by the proper officer: *Southern Oregon Co. v. Coos County*, 30 Or. 250. An order by the county court to levy on and sell all property delinquent for taxes is not a compliance with a statute providing for an order directing a warrant to issue, since such order does not show an order for a warrant for the purpose of collecting such tax from the land taxed: *Hughes v. Linn County*, 37 Or. 111.

¹ *Frazier v. Prince*, 8 Okl. 253; *Mattocks v. McLain L. & I. Co.* (Okl.), 68 Pac. Rep. 501. Warrant simply affixing the year held not to comply with a statute requiring the date to be affixed: *Shipman v. Forbes*, 97 Cal. 572. A warrant for the collection of highway and school-district taxes, which by alterations have been made to serve for several tax-bills, including that of 1881, and has been attached to that of 1882, will not justify the taking of property to satisfy a tax of 1881: *Rowell v. Horton*, 57 Vt. 31. Where, by re-assessment, property originally assessed against defendants jointly is assessed against them individually, such re-assess-

ment appearing on the tax-list, no charge need be made in the warrant to authorize suit by the collector: *Hunt v. Perry*, 165 Mass. 287. A warrant for the collection of a sewer assessment is not rendered invalid by the fact that it merely directs a collection "according to law," and does not direct the collector how to dispose of the money collected: *Leominster v. Conant*, 139 Mass. 384. A warrant to the collector, to which is attached the ordinary taxes and the amounts due for opening avenue, is sufficient to cover an assessment for that purpose, though the word "assessment" is omitted therefrom: *Stebbins v. Kay*, 51 Hun 589. As to sufficiency of warrants for collection of special assessments, see, also, *Doremus v. People*, 173 Ill. 63. The fact that the notice of the precept for the collection of a special assessment states the amount as \$32.10 instead of \$32.20 does not render the sale void; *de minimis non curat lex*: *Burt v. Haselman*, 139 Ind. 196. As to the warrant to be issued for collection of poll-tax, see Poll Tax, Collection of, 21 R. I. 582.

² A warrant to a tax-roll is not defective because addressed to the township treasurer simply, omitting his name: *Loud & Sons Lumber Co. v. Hagar*, 118 Mich. 452.

³ *Dinsmore v. Westcott*, 25 N. J. Eq. 470; *Stephens v. Wilkins*, 6 Pa. St. 260; *Cannell v. Crawford County*,

collector's predecessor in the address instead of the collector himself is an immaterial error,¹ and so in the case of a township is the omission of the name of the township if it elsewhere appears in the warrant.² In Maine, where the statute gave a form to be followed "in substance," it was held that the omission of that part of the form which directed the treasurer to levy distress in default of payment was an omission of matter of substance which rendered the warrant nugatory, and the treasurer might refuse to execute it.³ In Vermont it is said that a collector, to justify his attempt to make collection, must show a legal tax, a legal list, and that his process is legal;⁴ but in Vermont, as elsewhere, all mere informalities even in this important process will be overlooked;⁵ and an error in the date of the warrant will be held immaterial.⁶ In New Hampshire also the warrant is deemed sufficient if, in substance, the statute prescribing the form is followed.⁷ And in Maine the omission from the warrant of the words, "In the name of the state of Maine," which are a part of the statutory form, is held of no moment.⁸ In Massachusetts, where the statute provides

59 Pa. St. 196; *Harper v. Lindskog*, 13 S. D. 524. But a warrant is not invalid because addressed to the sheriff and not to the collector, the sheriff and collector being the same person: *Keith v. Freeman*, 43 Ark. 296. Where a tax is imposed for police purposes, the execution of the tax warrant may by law be committed to some other officer than the one named as collector of taxes in the constitution: *Youngblood v. Sexton*, 32 Mich. 403.

¹ *Wilson v. Seavey*, 38 Vt. 221.

² *First Nat. Bank v. St. Joseph*, 46 Mich. 526; *Auditor-General v. Stiles*, 83 Mich. 460.

³ *Bachelor v. Thompson*, 41 Me. 539. See *Pearson v. Canney*, 64 Me. 188; *Machiasport v. Small*, 77 Me. 109.

⁴ *Clove Spring Works v. Cone*, 56 Vt. 603; *Rowell v. Horton*, 57 Vt. 31.

⁵ *Chandler v. Spear*, 22 Vt. 388; *Spear v. Braintree*, 24 Vt. 414; *Goodwin v. Perkins*, 39 Vt. 598; *Wing v. Hall*, 47 Vt. 182. The validity of a

general warrant made in conformity with the statute, for the collection of all taxes, cannot be destroyed or impaired by the issue of a defective warrant, not required by the statute, for the collection of non-resident taxes: *Benton v. Merrill*, 68 N. H. 369. Neither list of delinquent taxpayers, nor warrant attached thereto, need show that taxes were assessed by proper authority: *Buchanan v. Cook*, 70 Vt. 168.

⁶ *Bellows v. Weeks*, 41 Vt. 590.

⁷ *Bailey v. Ackerman*, 54 N. H. 527. There is no distinction between a list incorporated in a warrant, and a list made a part thereof by adoption and reference: *Bailey v. Ackerman*, 54 N. H. 531. *S. P., Doremus v. People*, 173 Ill. 63.

⁸ *Mussey v. White*, 3 Me. 290. In other states a constitutional provision that all process shall run "in the name of the people," etc., is held not applicable to a collector's warrant: *Haley v. Elliott*, 16 Colo. 159, 20 Colo.

that "the assessors shall commit the tax-list, with the warrant under their hands, to the collector for collection," a failure to attach them, if both are delivered to the collector, is immaterial.¹ And in the same state an error in the command of the warrant, by which the collector was directed to arrest the person taxed within twelve days, instead of fourteen, as it should have been, after demand of the tax, if the same should not be paid, etc., will not vitiate the warrant, nor become material unless the direction to arrest is acted upon.² In Connecticut, it is very properly held that if the warrant is not attached to the tax list when its command is to collect of the persons "named in the annexed list," there is nothing to which these words can apply, and the command of the warrant is nugatory, so that the collector can take the property of no one by virtue thereof.³ An error in the direction to the collector by which he is commanded to account to the wrong officer is immaterial; this being a matter that does not concern the taxpayers.⁴ The same is true of a failure to limit by the warrant the time within which the treasurer shall collect the tax.⁵ In Illinois it is said that the omission from the warrant of a power to distrain in case of non-payment will not so far vitiate it as to excuse the failure to pay and entitle the person taxed to

379; *Tweed v. Metcalf*, 4 Mich. 579; *Wisner v. Davenport*, 5 Mich. 501; *Curry v. Hinman*, 11 Ill. 420; *Scarritt v. Chapman*, 11 Ill. 443; *Sprague v. Birchard*, 1 Wis. 457. In New Hampshire a collector's warrant is held not to be returnable process: *Hoitt v. Burnham*, 61 N. H. 620.

¹ *Barnard v. Graves*, 13 Met. 89.

² *Barnard v. Graves*, 13 Met. 89, citing *King v. Whitcomb*, 1 Met. 328. "It is a general rule that an illegal provision in a warrant, separable from its other provisions, will not vitiate the instrument, nor become material, unless the direction is acted upon. No objection can be raised thereto by the person against whom there is no attempt to enforce it;" and therefore an unauthorized mandate, not sought to be enforced,

to collect interest does not affect the warrant's validity in other respects: *Bath v. Whitmore*, 79 Me. 182. So, an unwarranted proceeding on the collector's part—as where he advertised lands for sale though he was only commanded by the warrant to make the taxes by a sale of goods and chattels—did not avoid the warrant: *Estell v. Hawken*, 50 N. J. L. 122.

³ *Picket v. Allen*, 10 Conn. 146.

⁴ *Clemons v. Lewis*, 36 Vt. 673. Compare *Tweed v. Metcalf*, 4 Mich. 579.

⁵ *Walker v. Miner*, 32 Vt. 769. Such a warrant may be defective as between the collector and the public he acts for, but the defect does not invalidate any action taken to collect the tax under it: *Ibid*.

have relief in equity.¹ In Maine a warrant exempting from distress for non-payment other property in addition to the exemptions allowed by law has been held to confer upon the officer no authority and to impose upon him no duty.² And probably in any state it would be held, as it has been in Illinois, that if the warrant is for the collection of a municipal tax which is void because the ordinance which assumed to impose it was not authorized by law, the warrant itself is void also.³

Signing. The warrant should be properly signed; but it is sufficient that it be signed by a majority of a joint board of assessors;⁴ and if signed by supervisors as required by law, the signing is sufficient though they fail to add to their names their official titles.⁵

Sealing. If the statute requires the warrant to be issued by the county clerk under his hand and official seal, a warrant without such seal is void, and proceedings taken thereunder are illegal.⁶

Delivery. A provision of statute that the officer or board making out the warrant shall deliver it to the collector by a day named is only directory.⁷ But any such delay as would leave the collector insufficient time for compulsory proceedings under the statute would of course preclude their being taken.

Exhausting authority. The issue of a void tax warrant would not exhaust the authority to issue a valid one. In some states by statute, or by a customary course of procedure, when one valid process does not result in the collection of all the tax,

¹ Union Trust Co. v. Weber, 96 Ill. 346.

² Boothbay v. Giles, 64 Me. 403.

³ Butler v. Nevin, 88 Ill. 575.

⁴ Sprague v. Bailey, 19 Pick. 436. Where the warrant of assessment was properly signed by the superintendent of streets and countersigned by the mayor, as required by the statute, the fact that the mayor's signature was omitted in recording the warrant did not invalidate the assess-

ment: Gillis v. Cleveland, 87 Cal. 214.

⁵ Sheldon v. Van Buskirk, 2 N. Y. 473.

⁶ Mattocks v. McLain L. & I. Co. (Okl.), 68 Pac. Rep. 501.

⁷ Bank of Garnett v. Ferris, 55 Kan. 120; Alvard v. Collins, 20 Pick. 418; Hubbard v. Winsor, 15 Mich. 146; Smith v. Crittenden, 16 Mich. 152. *Contra*, Cardigan v. Page, 6 N. H. 182.

another may issue.¹ The warrant is sometimes extended or renewed under statutes providing therefor.² For personal taxes which remain uncollected suits are sometimes provided for, especially where the failure to collect is in consequence of a removal of the party taxed from the treasurer's jurisdiction.

¹ See *Eddy v. Wilson*, 43 Vt. 362.

² See *Griswold v. School Dist.*, 24 Mich. 262; *Gratwick, etc. Lumber Co. v. Oscoda*, 97 Mich. 221; *Baker v. Lee*, 41 Hun 591; *Willis v. Heighway*, 40 S. C. 476; *New Richmond Lumber Co. v. Rogers*, 68 Wis. 603. See *Baldwin v. State*, 89 Md. 587. The extension is for the benefit and convenience of the collector, not of the taxpayer. The latter cannot complain if the

officer makes his return before the expiration of the extended time: *Drennan v. Beierlein*, 49 Mich. 272. The issuing of a new warrant while the period of extension of the old one is unexpired, if both the new and the old are attached to the roll, will be immaterial; a levy being then good if either warrant is valid: *Bird v. Perkins*, 33 Mich. 28.